

Subdivision (p)(3) is added to provide that the court may, for cause, override a creditor's designation of a foreign address under Rule 2002(g). For example, if a party in interest believes that a creditor has wrongfully designated a foreign address to obtain additional time when it has a significant presence in the United States, the party can ask the court to order that notices to that creditor be sent to an address other than the one designated by the foreign creditor.

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative.

Changes Made After Publication. Subdivision (g)(2) was amended to provide that the designated address of a governmental unit under Rule 5003(e) establishes an exception to the rule that a creditor's address is to be taken from the debtor's schedules. The fifth and sixth paragraphs of the Committee Note were amended to explain that change.

Subdivision (p)(3) was added to the rule to provide that the court may override a creditor's designation of a foreign mailing address under Rule 2002(g). This will permit a party in interest to seek court relief if a creditor has improperly designated a foreign address.

Subdivision (q)(1) and (2) were amended by adopting language from §101(24) to identify foreign representatives as "all persons or bodies authorized to administer foreign proceedings of the debtor" rather than as "all administrators in foreign proceedings of the debtor." References to Rule 5012 in subdivision (q)(2) and in the Committee Note were deleted.

REFERENCES IN TEXT

The Securities Investor Protection Act, referred to in subd. (k), probably means the Securities Investor Protection Act of 1970, Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

AMENDMENT BY PUBLIC LAW

1984—Subd. (n). Pub. L. 98-353 added subd. (n).
1983—Subd. (f). Pub. L. 98-91 inserted ", or some other person as the Court may direct," after "clerk".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1 of Pub. L. 98-91 provided: "That rule 2002(f) of the Bankruptcy Rules, as proposed by the United States Supreme Court in the order of April 25, 1983, of the Court, shall take effect on August 1, 1983, except as otherwise provided in section 2 [amending subd. (f) of this rule and enacting a provision set out as a note below]."

Section 2(b) of Pub. L. 98-91 provided that: "The amendment made by subsection (a) [amending subd. (f) of this rule] shall take effect on August 1, 1983."

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) DATE AND PLACE. Except as otherwise provided in §341(e) of the Code, in a chapter 7 liq-

uidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 40 days after the order for relief. In a chapter 12 family farmer's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.

(b) ORDER OF MEETING.

(1) *Meeting of Creditors.* The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths.

(2) *Meeting of Equity Security Holders.* If the United States trustee convenes a meeting of equity security holders pursuant to §341(b) of the Code, the United States trustee shall fix a date for the meeting and shall preside.

(3) *Right To Vote.* In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to §702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee for the estate of the general partner notwithstanding that a trustee for the estate of the partnership has previously qualified. In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.

(c) RECORD OF MEETING. Any examination under oath at the meeting of creditors held pursuant to §341(a) of the Code shall be recorded verbatim by the United States trustee using electronic sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon re-

quest of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.

(d) REPORT OF ELECTION AND RESOLUTION OF DISPUTES IN A CHAPTER 7 CASE.

(1) *Report of Undisputed Election.* In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed.

(2) *Disputed Election.* If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. No later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 10 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.

(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

(f) SPECIAL MEETINGS. The United States trustee may call a special meeting of creditors on request of a party in interest or on the United States trustee's own initiative.

(g) FINAL MEETING. If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed \$1,500, the clerk shall mail a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 26, 1999, eff. Dec. 1, 1999; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 341(a) of the Code requires a meeting of creditors in a chapter 7, 11 or 13 case, and §341(b) permits the court to order a meeting of equity security holders. A major change from prior law, however, prohibits the judge from attending or presiding over the meeting. Section 341(c).

This rule does not apply either in a case for the reorganization of a railroad or for the adjustment of debts of a municipality. Sections 1161 and 901 render §§341 and 343 inapplicable in these types of cases. Section 341 sets the requirement for a meeting of creditors and §343 provides for the examination of the debtor.

Subdivision (a). The meeting is to be held between 20 and 40 days after the date of the order for relief. In a voluntary case, the date of the order for relief is the date of the filing of the petition (§301 of the Code); in an involuntary case, it is the date of an actual order (§303(i) of the Code).

Subdivision (b) provides flexibility as to who will preside at the meeting of creditors. The court may designate a person to serve as presiding officer, such as the interim trustee appointed under §701 of the Code. If the court does not designate anyone, the clerk will preside. In either case, creditors may elect a person of their own choosing. In any event, the clerk may remain to record the proceedings and take appearances. Use of the clerk is not contrary to the legislative policy of §341(c). The judge remains insulated from any information coming forth at the meeting and any information obtained by the clerk must not be relayed to the judge.

Although the clerk may preside at the meeting, the clerk is not performing any kind of judicial role, nor should the clerk give any semblance of performing such a role. It would be pretentious for the clerk to ascend the bench, don a robe or be addressed as "your honor". The clerk should not appear to parties or others as any type of judicial officer.

In a chapter 11 case, if a committee of unsecured creditors has been appointed pursuant to §1102(a)(1) of the Code and a chairman has been selected, the chairman will preside or a person, such as the attorney for the committee, may be designated to preside by the chairman.

Since the judge must fix the bond of the trustee but cannot be present at the meeting, the rule allows the creditors to recommend the amount of the bond. They should be able to obtain relevant information concerning the extent of assets of the debtor at the meeting.

Paragraph (1) authorizes the presiding officer to administer oaths. This is important because the debtor's examination must be under oath.

Paragraph (3) of subdivision (b) has application only in a chapter 7 case. That is the only type of case under the Code that permits election of a trustee or committee. In all other cases, no vote is taken at the meeting of creditors. If it is necessary for the court to make a determination with respect to a claim, the meeting may be adjourned until the objection or dispute is resolved.

The second sentence recognizes that partnership creditors may vote for a trustee of a partner's estate along with the separate creditors of the partner. Although §723(c) gives the trustee of a partnership a claim against a partner's estate for the full amount of partnership creditors' claims allowed, the purpose and function of this provision are to simplify distribution and prevent double proof, not to disfranchise partnership creditors in electing a trustee of an estate against which they hold allowable claims.

Subdivision (c) requires minutes and a record of the meeting to be maintained by the presiding officer. A verbatim record must be made of the debtor's examination but the rule is flexible as to the means used to record the examination.

Subdivision (d) recognizes that the court must be informed immediately about the election or nonelection of a trustee in a chapter 7 case. Pursuant to Rule 2008, the clerk officially informs the trustee of his election or appointment and how he is to qualify. The presiding person has no authority to resolve a disputed election.

For purposes of expediency, the results of the election should be obtained for each alternative presented by the dispute and immediately reported to the court. Thus, when an interested party presents the dispute to the court, its prompt resolution by the court will determine the dispute and a new or adjourned meeting to conduct the election may be avoided. The clerk is not an interested party.

A creditors' committee may be elected only in a chapter 7 case. In chapter 11 cases, a creditors' committee is appointed pursuant to §1102.

While a final meeting is not required, Rule 2002(f)(10) provides for the trustee's final account to be sent to creditors.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Subdivision (a). Many courts schedule meetings of creditors at various locations in the district. Because

the clerk must schedule meetings at those locations, an additional 20 days for scheduling the meetings is provided under the amended rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The amendment to subdivision (a) relating to the calling of the meeting of creditors in a chapter 12 case is consistent with the expedited procedures of chapter 12. Subdivision (a) is also amended to clarify that the United States trustee does not call a meeting of creditors in a chapter 9 case. Pursuant to §901(a) of the Code, §341 is inapplicable in chapter 9 cases. The other amendments to subdivisions (a), (b)(1), and (b)(2) and the additions of subdivisions (f) and (g) are derived from Rule X-1006 and conform to the 1986 amendments to §341 of the Code. The second sentence of subdivision (b)(3) is amended because Rule 2009(e) is abrogated. Although the United States trustee fixes the date for the meeting, the clerk of the bankruptcy court transmits the notice of the meeting unless the court orders otherwise, as prescribed in Rule 2002(a)(1).

Pursuant to §702 and §705 of the Code, creditors may elect a trustee and a committee in a chapter 7 case. Subdivision (b) of this rule provides that the United States trustee shall preside over any election that is held under those sections. The deletion of the last sentence of subdivision (b)(1) does not preclude creditors from recommending to the United States trustee the amount of the trustee's bond when a trustee is elected. Trustees and committees are not elected in chapter 11, 12, and 13 cases.

If an election is disputed, the United States trustee shall not resolve the dispute. For purposes of expediency, the United States trustee shall tabulate the results of the election for each alternative presented by the dispute. However, if the court finds that such tabulation is not feasible under the circumstances, the United States trustee need not tabulate the votes. If such tabulation is feasible and if the disputed vote or votes would affect the result of the election, the tabulations of votes for each alternative presented by the dispute shall be reported to the court. If a motion is made for resolution of the dispute in accordance with subdivision (d) of this rule, the court will determine the issue and another meeting to conduct the election may not be necessary.

Subdivisions (f) and (g) are derived from Rule X-1006(d) and (e), except that the amount is increased to \$1,500 to conform to the amendment to Rule 2002(f).

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Subdivision (a) is amended to extend by ten days the time for holding the meeting of creditors in a chapter 13 case. This extension will provide more flexibility for scheduling the meeting of creditors. Other amendments are stylistic and make no substantive change.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

Subdivision (d) is amended to require the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

The substitution of "United States trustee" for "presiding officer" is stylistic. Section 341(a) of the Code provides that the United States trustee shall preside at the meeting of creditors. Other amendments are designed to conform to the style of Rule 2007.1(b)(3) regarding the election of a trustee in a chapter 11 case.

GAP Report on Rule 2003. No changes since publication.

COMMITTEE NOTES ON RULES—2003 AMENDMENT

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multi-

lateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, the meeting of creditors in those cases cannot include the election of a trustee.

Changes Made After Publication and Comments. No changes since publication.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

If the debtor has solicited acceptances to a plan before commencement of the case, §341(e), which was added to the Code by the 2005 amendments, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

Changes Made After Publication. No changes were made after publication.

Rule 2004. Examination

(a) **EXAMINATION ON MOTION.** On motion of any party in interest, the court may order the examination of any entity.

(b) **SCOPE OF EXAMINATION.** The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) **COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS.** The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

(d) **TIME AND PLACE OF EXAMINATION OF DEBTOR.** The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) **MILEAGE.** An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first peti-