

tion commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a) of this rule is derived from former Bankruptcy Rule 205(a). See generally 2 Collier, *Bankruptcy* ¶¶ 343.02, 343.08, 343.13 (15th ed. 1981). It specifies the manner of moving for an examination. The motion may be heard *ex parte* or it may be heard on notice.

Subdivision (b) is derived from former Bankruptcy Rules 205(d) and 11-26.

Subdivision (c) specifies the mode of compelling attendance of a witness or party for an examination and for the production of evidence under this rule. The subdivision is substantially declaratory of the practice that had developed under §21a of the Act. See 2 Collier, *supra* ¶ 343.11.

This subdivision will be applicable for the most part to the examination of a person other than the debtor. The debtor is required to appear at the meeting of creditors for examination. The word “person” includes the debtor and this subdivision may be used if necessary to obtain the debtor’s attendance for examination.

Subdivision (d) is derived from former Bankruptcy Rule 205(f) and is not a limitation on subdivision (c). Any person, including the debtor, served with a subpoena within the range of a subpoena must attend for examination pursuant to subdivision (c). Subdivision (d) applies only to the debtor and a subpoena need not be issued. There are no territorial limits on the service of an order on the debtor. See, e.g., *In re Totem Lodge & Country Club, Inc.*, 134 F. Supp. 158 (S.D.N.Y. 1955).

Subdivision (e) is derived from former Bankruptcy Rule 205(g). The lawful mileage and fee for attendance at a United States court as a witness are prescribed by 28 U.S.C. §1821.

Definition of debtor. The word “debtor” as used in this rule includes the persons specified in the definition in Rule 9001(5).

Spousal privilege. The limitation on the spousal privilege formerly contained in §21a of the Act is not carried over in the Code. For privileges generally, see Rule 501 of the Federal Rules of Evidence made applicable in cases under the Code by Rule 1101 thereof.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to allow the examination in a chapter 12 case to cover the same matters that may be covered in an examination in a chapter 11 or 13 case.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (c) is amended to clarify that an examination ordered under Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F. R. Civ. P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F. R. Civ. P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice, even if admitted *pro hac vice*, either in the court in which the case is pending or in the court for the district in which the examination is to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F. R. Civ. P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, to ease the burdens of interdistrict law practice.

Changes Made After Publication and Comments. The typographical error was corrected, but no other changes were made.

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination

(a) ORDER TO COMPEL ATTENDANCE FOR EXAMINATION. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor’s residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor’s obedience to all orders made in reference thereto.

(b) REMOVAL. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If the debtor is taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If the debtor is taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance.

(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., §3146(a) and (b).

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Bankruptcy Rule 206. The rule requires the debtor to be examined as soon as possible if allegations of the movant for compulsory examination under this rule are found to be true after a hearing. Subdivision (b) includes in paragraphs (1) and

(2) provisions adapted from subdivisions (a) and (b) of Rule 40 of the Federal Rules of Criminal Procedure, which governs the handling of a person arrested in one district on a warrant issued in another. Subdivision (c) incorporates by reference the features of subdivisions (a) and (b) of 18 U.S.C. §3146, which prescribe standards, procedures and factors to be considered in determining conditions of release of accused persons in noncapital cases prior to trial. The word “debtor” as used in this rule includes the persons named in Rule 9001(5).

The affidavit required to be submitted in support of the motion may be subscribed by the unsworn declaration provided for in 28 U.S.C. §1746.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Subdivision (b)(2) is amended to conform to §321 of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, which changed the title of “United States magistrate” to “United States magistrate judge.” Other amendments are stylistic and make no substantive change.

Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases

(a) **APPLICABILITY.** This rule applies only in a liquidation case pending under chapter 7 of the Code.

(b) **DEFINITIONS.**

(1) *Proxy.* A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner’s attorney in fact in connection with the administration of the estate.

(2) *Solicitation of Proxy.* The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

(c) **AUTHORIZED SOLICITATION.**

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to §705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under §702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over \$500 or the 100 creditors having the largest claims had at least five days notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(d) **SOLICITATION NOT AUTHORIZED.** This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any entity not qualified

to vote under §702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(e) **DATA REQUIRED FROM HOLDERS OF MULTIPLE PROXIES.** At any time before the voting commences at any meeting of creditors pursuant to §341(a) of the Code, or at any other time as the court may direct, a holder of two or more proxies shall file and transmit to the United States trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, other than a member or regular associate of the proxyholder’s law firm, which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity other than a member or regular associate of the solicitor’s or forwarder’s law firm which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;