

scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).

(4) *Effect of Filing Claim or Interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to §521(a)(1) of the Code.

(5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) **PROOF OF RIGHT TO RECORD STATUS.** For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a). This rule applies only in chapter 9 and chapter 11 cases. It is adapted from former Chapter X Rule 10-401 and provides an exception to the requirement for filing proofs of claim and interest as expressed in §§925 and 1111(a) of the Code.

Subdivision (b). This general statement implements §§925 and 1111(a) of the Code.

Subdivision (c). This subdivision permits, in paragraph (1), the filing of a proof of claim but does not make it mandatory. Paragraph (2) requires, as does the Code, filing when a claim is scheduled as disputed, contingent, or unliquidated as to amount. It is the creditor's responsibility to determine if the claim is accurately listed. Notice of the provision of this rule is provided for in Official Form No. 16, the order for the meeting of creditors. In an appropriate case the court may order creditors whose claims are scheduled as disputed, contingent, or unliquidated be notified of that fact but the procedure is left to the discretion of the court.

Subdivision (d) is derived from former Chapter X Rule 10-401(f).

Except with respect to the need and time for filing claims, the other aspects concerning claims covered by Rules 3001 and 3002 are applicable in chapter 9 and 11 cases.

Holders of equity security interests need not file proofs of interest. Voting and distribution participation is dependent on ownership as disclosed by the appropriate records of a transfer agent or the corporate or other business records at the time prescribed in Rules 3017 and 3021.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Paragraph (3) of subdivision (c) is amended to permit the late filing of claims by infants or incompetent persons under the same circumstances that permit late filings in cases under chapter 7, 12, or 13. The amendment

also provides sufficient time in which to file a claim that arises from a postpetition judgment against the claimant for the recovery of money or property or the avoidance of a lien. It also provides for purposes of clarification that upon rejection of an executory contract or unexpired lease, the court shall set a time for filing a claim arising therefrom despite prior expiration of the time set for filing proofs of claim.

The caption of paragraph (4) of subdivision (c) is amended to indicate that it applies to a proof of claim.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (c)(3) is amended to implement §1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

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

Rule 3004. Filing of Claims by Debtor or Trustee

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 25, 2005, eff. Dec. 1, 2005.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 303 but conforms with the changes made by §501(c) of the Code. Rule 303 permitted only the filing of tax and wage claims by the debtor. Section 501(c) of the Code, however, permits the filing by the debtor or trustee on behalf of any creditor.

It is the policy of the Code that debtors' estates should be administered for the benefit of creditors without regard to the dischargeability of their claims. After their estates have been closed, however, discharged debtors may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding non-dischargeable claims to file proofs of claim and receive distributions thereon. The result is that the debtor is deprived of an important benefit of the Code without any fault or omission on the debtor's part and without any objective of the Code being served thereby.

Section 501(c) of the Code authorizes a debtor or trustee to file a proof of claim for any holder of a claim. Although all claims may not be nondischargeable, it may be difficult to determine, in particular, whether tax claims survive discharge. See Plumb, *Federal Tax Liens and Priorities in Bankruptcy*, 43 Ref. J. 37, 43-44 (1969); 1 Collier, *Bankruptcy* ¶17.14 (14th ed. 1967); 3 *id.* ¶523.06 (15th ed. 1979). To eliminate the necessity of the resolution of this troublesome issue, the option accorded the debtor by the Code does not depend on the nondischargeability of the claim. No serious administrative problems and no unfairness to creditors seemed to develop from adoption of Rule 303, the forerunner to §501(c). The authority to file is conditioned on the creditor's failure to file the proof of claim on or before the first date set for the meeting of creditors, which is the date a claim must ordinarily be filed in order to be voted in a chapter 7 case. Notice to the creditor is provided to enable him to file a proof of claim pursuant to Rule 3002, which proof, when filed, would supersede the proof filed by the debtor or trustee. Notice to the trustee would serve to alert the trustee to the special character of the proof and the possible need for supplementary evidence of the validity and amount of the

claim. If the trustee does not qualify until after a proof of claim is filed by the debtor pursuant to this rule, he should be notified as soon as practicable thereafter.

To the extent the claim is allowed and dividends paid thereon, it will be reduced or perhaps paid in full. If the claim is also filed pursuant to Rule 3005, only one distribution thereon may be made. As expressly required by Rule 3005 and by the purpose of this rule such distribution must diminish the claim.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Under the rule as amended, the debtor or trustee in a chapter 7 or 13 case has 120 days from the first date set for the meeting of creditors to file a claim for the creditor. During the first 90 days of that period the creditor in a chapter 7 or 13 case may file a claim as provided by Rule 3002(c). If the creditor fails to file a claim, the debtor or trustee shall have an additional 30 days thereafter to file the claim. A proof of claim filed by a creditor supersedes a claim filed by the debtor or trustee only if it is timely filed within the 90 days allowed under Rule 3002(c).

COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to conform to §501(c) of the Code. Under that provision, the debtor or trustee may file proof of a claim if the creditor fails to do so in a timely fashion. The rule previously authorized the debtor and the trustee to file a claim as early as the day after the first date set for the meeting of creditors under §341(a). Under the amended rule, the debtor and trustee must wait until the creditor's opportunity to file a claim has expired. Providing the debtor and the trustee with the opportunity to file a claim ensures that the claim will participate in any distribution in the case. This is particularly important for claims that are nondischargeable.

Since the debtor and trustee cannot file a proof of claim until after the creditor's time to file has expired, the rule no longer permits the creditor to file a proof of claim that will supersede the claim filed by the debtor or trustee. The rule leaves to the courts the issue of whether to permit subsequent amendment of such proof of claim.

Other changes are stylistic.

Changes Made After Publication and Comment. No changes were made after publication. The Advisory Committee concluded that Mr. Van Allsburg's suggestion goes beyond the scope of the published proposal. Consequently, the Committee declined to adopt the suggestion but may consider it in greater detail at a future meeting.

Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor

(a) **FILING OF CLAIM.** If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or Rule 3003(c) whichever is applicable. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution.

(b) **FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR.** An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c)

or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Rules 304 and 10-402. Together with §501(b) of the Code, the rule makes clear that anyone who may be liable on a debt of the debtor, including a surety, guarantor, indorser, or other codebtor, is authorized to file in the name of the creditor of the debtor.

Subdivision (a). Rule 3002(c) provides the time period for filing proofs of claim in chapter 7 and 13 cases; Rule 3003(c) provides the time, when necessary, for filing claims in a chapter 9 or 11 case.

Subdivision (b). This subdivision applies in chapter 9 and 11 cases as distinguished from chapter 7 cases. It permits voting for or against a plan by an obligor who files a claim in place of the creditor.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The words "with the court" in subdivision (b) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to delete the last sentence of subdivision (a). The sentence is unnecessary because if a creditor has filed a timely claim under Rule 3002 or 3003(c), the codebtor cannot file a proof of such claim. The codebtor, consistent with §501(b) of the Code, may file a proof of such claim only after the creditor's time to file has expired. Therefore, the rule no longer permits the creditor to file a superseding claim. The rule leaves to the courts the issue of whether to permit subsequent amendment of the proof of claim.

The amendment conforms the rule to §501(b) by deleting language providing that the codebtor files proof of the claim in the name of the creditor.

Other amendments are stylistic.

Changes Made After Publication and Comment:

(a) The reference on line 2 of Rule 3005 to "Rule 3002 or 3003(c)" was changed to read "Rule 3002(c) or 3003(c)" to make it parallel to the language in Rule 3004.

(b) The phrase "file a proof of the claim" from line 7 of the proposed rule was moved up to line 4 of the proposed amendment immediately after the word "may". This makes the structure of Rules 3004 and 3005 more consistent.

Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to §705(a) or appointed pursuant to §1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.