

dures. In addition, before procedures for electronic filing are implemented, standards must be established to assure the proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. These matters will be governed by local rules until system-wide standards are adopted by the Judicial Conference.

Rule 9009 requires that the Official Forms shall be observed and used “with alterations as may be appropriate.” Compliance with local rules and any Judicial Conference standards with respect to the formatting or presentation of electronically transmitted data, to the extent that they do not conform to the Official Forms, would be an appropriate alteration within the meaning of Rule 9009.

These rules require that certain documents be in writing. For example, Rule 3001 states that a proof of claim is a “written statement.” Similarly, Rule 3007 provides that an objection to a claim “shall be in writing.” Pursuant to the new subdivision (a)(2), any requirement under these rules that a paper be written may be satisfied by filing the document by electronic means, notwithstanding the fact that the clerk neither receives nor prints a paper reproduction of the electronic data.

Section 107(a) of the Code provides that a “paper” filed in a case is a public record open to examination by an entity at reasonable times without charge, except as provided in §107(b). The amendment to subdivision (a)(2) provides that an electronically filed document is to be treated as such a public record.

Although under subdivision (a)(2) electronically filed documents may be treated as written papers or as signed or verified writings, it is important to emphasize that such treatment is only for the purpose of applying these rules. In addition, local rules and Judicial Conference standards regarding verification must satisfy the requirements of 28 U.S.C. §1746.

GAP Report on Rule 5005. No changes since publication.

COMMITTEE NOTES ON RULES—2006 AMENDMENT

Subdivision (a). Amended Rule 5005(a)(2) acknowledges that many courts have required electronic filing by means of a standing order, procedures manual, or local rule. These local practices reflect the advantages that courts and most litigants realize from electronic filings. Courts requiring electronic filing must make reasonable exceptions for persons for whom electronic filing of documents constitutes an unreasonable denial of access to the courts. Experience with the rule will facilitate convergence on uniform exceptions in an amended Rule 5005(a)(2).

Subdivision (c). The rule is amended to include the clerk of the bankruptcy appellate panel among the list of persons required to transmit to the proper person erroneously filed or transmitted papers. The amendment is necessary because the bankruptcy appellate panels were not in existence at the time of the original promulgation of the rule. The amendment also inserts the district judge on the list of persons required to transmit papers intended for the United States trustee but erroneously sent to another person. The district judge is included in the list of persons who must transmit papers to the clerk of the bankruptcy court in the first part of the rule, and there is no reason to exclude the district judge from the list of persons who must transmit erroneously filed papers to the United States trustee.

Changes Made After Publication. The published version of the Rule did not include the sentence set out on lines 7–10 above [sic]. The Advisory Committee concluded, based on the written comments received and additional Advisory Committee consideration, that the text of the rule should include a statement regarding the need for courts to protect access to the courts for those whose status might not allow for electronic participation in cases. The published version had relegated this notion to the Committee Note, but further deliberations led to the conclusion that this matter is too important to

leave to the Committee Note and instead should be included in the text of the rule.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (a)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 5006. Certification of Copies of Papers

The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the clerk on payment of any prescribed fee.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Fees for certification and copying are fixed by the Judicial Conference under 28 U.S.C. §1930(b).

Rule 1101 F. R. Evid. makes the Federal Rules of Evidence applicable to cases under the Code. Rule 1005 F. R. Evid. allows the contents of an official record or of a paper filed with the court to be proved by a duly certified copy. A copy certified and issued in accordance with Rule 5006 is accorded authenticity by Rule 902(4) F. R. Evid.

Rule 5007. Record of Proceedings and Transcripts

(a) **FILING OF RECORD OR TRANSCRIPT.** The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.

(b) **TRANSCRIPT FEES.** The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.

(c) **ADMISSIBILITY OF RECORD IN EVIDENCE.** A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule supplements 28 U.S.C. §773. A record of proceedings before the bankruptcy judge is to be made whenever practicable. By whatever means the record is made, subdivision (a) requires that the preparer of the record certify and file the original notes, tape recording, or other form of sound recording of the proceedings. Similarly, if a transcript is requested, the preparer is to file a certified copy with the clerk.

Subdivision (b) is derived from 28 U.S.C. §753(f).

Subdivision (c) is derived from former Bankruptcy Rule 511(c). This subdivision extends to a sound recording the same evidentiary status as a transcript under 28 U.S.C. §773(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

The words “with the clerk” in the final sentence of subdivision (a) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors

If a presumption of abuse has arisen under §707(b) in a chapter 7 case of an individual with

primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1991

This rule [Rule 5008. Funds of the Estate; abrogated Apr. 30, 1991, eff. Aug. 1, 1991] is abrogated in view of the amendments to §345(b) of the Code and the role of the United States trustee in approving bonds and supervising trustees.

COMMITTEE NOTES ON RULES—2008

This rule is new. The 2005 amendments to §342 of the Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under §707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in §342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, the rule requires that the clerk send a second notice.

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

Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases

If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is the same as §350(a) of the Code. An estate may be closed even though the period allowed by Rule 3002(c) for filing claims has not expired. The closing of a case may be expedited when a notice of no dividends is given under Rule 2002(e). Dismissal of a case for want of prosecution or failure to pay filing fees is governed by Rule 1017.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The final report and account of the trustee is required to be filed with the court and the United States trustee under §§704(9), 1202(b)(1), and 1302(b)(1) of the Code. This amendment facilitates the United States trustee's performance of statutory duties to supervise trustees and administer cases under chapters 7, 12, and 13 pursuant to 28 U.S.C. §586. In the absence of a timely objection by the United States trustee or a party in in-

terest, the court may discharge the trustee and close the case pursuant to §350(a) without the need to review the final report and account or to determine the merits of the trustee's certification that the estate has been fully administered.

Rule 3022 governs the closing of chapter 11 cases.

Rule 5010. Reopening Cases

A case may be reopened on motion of the debtor or other party in interest pursuant to §350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is not necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 350(b) of the Code provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

Rule 9024, which incorporates Rule 60 F.R.Civ.P., exempts motions to reopen cases under the Code from the one year limitation of Rule 60(b).

Although a case has been closed the court may sometimes act without reopening the case. Under Rule 9024, clerical errors in judgments, orders, or other parts of the record or errors therein caused by oversight or omission may be corrected. A judgment determined to be non-dischargeable pursuant to Rule 4007 may be enforced after a case is closed by a writ of execution obtained pursuant to Rule 7069.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

In order to avoid unnecessary cost and delay, the rule is amended to permit reopening of a case without the appointment of a trustee when the services of a trustee are not needed.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to conform to the 1986 amendments to the Code that give the United States trustee the duty to appoint trustees in chapter 7, 12 and 13 cases. See §§701, 702(d), 1202(a), and 1302(a) of the Code. In most reopened cases, a trustee is not needed because there are no assets to be administered. Therefore, in the interest of judicial economy, this rule is amended so that a motion will not be necessary unless the United States trustee or a party in interest seeks the appointment of a trustee in the reopened case.

Rule 5011. Withdrawal and Abstention from Hearing a Proceeding

(a) WITHDRAWAL. A motion for withdrawal of a case or proceeding shall be heard by a district judge.

(b) ABSTENTION FROM HEARING A PROCEEDING. A motion for abstention pursuant to 28 U.S.C. §1334(c) shall be governed by Rule 9014 and shall be served on the parties to the proceeding.

(c) EFFECT OF FILING OF MOTION FOR WITHDRAWAL OR ABSTENTION. The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. §1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A