

Changes Made After Publication. No changes since publication.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subs. (b) and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9015. Jury Trials

(a) **APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE.** Rules 38, 39, and 47–51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made pursuant to Rule 38(b) F.R.Civ.P. shall be filed in accordance with Rule 5005.

(b) **CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE.** If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. §157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

(Added Apr. 11, 1997, eff. Dec. 1, 1997.)

NOTES OF ADVISORY COMMITTEE ON RULES—1997

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

GAP Report on Rule 9015. No changes to the published draft.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9016. Subpoena

Rule 45 F.R.Civ.P. applies in cases under the Code.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Although Rule 7004(d) authorizes nationwide service of process, Rule 45 F.R.Civ.P. limits the subpoena power to the judicial district and places outside the district which are within 100 miles of the place of trial or hearing.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9017. Evidence

The Federal Rules of Evidence and Rules 43, 44 and 44.1 F.R.Civ.P. apply in cases under the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Sections 251 and 252 of Public Law 95–598, amended Rule 1101 of the Federal Rules of Evidence to provide that the Federal Rules of Evidence apply in bankruptcy courts and to any case or proceeding under the Code. Rules 43, 44 and 44.1 of the F.R.Civ.P., which supplement the Federal Rules of Evidence, are by this rule made applicable to cases under the Code.

Examples of bankruptcy rules containing matters of an evidentiary nature are: Rule 2011, evidence of debtor

retained in possession; Rule 3001(f), proof of claim constitutes prima facie evidence of the amount and validity of a claim; and Rule 5007(c), sound recording of court proceedings constitutes the record of the proceedings.

REFERENCES IN TEXT

The Federal Rules of Evidence and the Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule provides the procedure for invoking the court's power under §107 of the Code.

Rule 9019. Compromise and Arbitration

(a) **COMPROMISE.** On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

(b) **AUTHORITY TO COMPROMISE OR SETTLE CONTROVERSIES WITHIN CLASSES.** After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) **ARBITRATION.** On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivisions (a) and (c) of this rule are essentially the same as the provisions of former Bankruptcy Rule 919 and subdivision (b) is the same as former Rule 8–514(b), which was applicable to railroad reorganizations. Subdivision (b) permits the court to deal efficiently with a case in which there may be a large number of settlements.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to enable the United States trustee to object or otherwise be heard in connection with a proposed compromise or settlement and otherwise to monitor the progress of the case.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Subdivision (a) is amended to conform to the language of §102(1) of the Code. Other amendments are stylistic and make no substantive change.

Rule 9020. Contempt Proceedings

Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2001, eff. Dec. 1, 2001.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 1481 of Title 28 provides that a bankruptcy court “may not . . . punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.” Rule 9020 does not enlarge the power of bankruptcy courts.

Subdivision (a) is adapted from former Bankruptcy Rule 920 and Rule 42 F.R.Crim.P. Paragraph (1) of the subdivision permits summary imposition of punishment for contempt if the conduct is in the presence of the court and is of such nature that the conduct “obstruct[s] the administration of justice.” See 18 U.S.C. §401(a). Cases interpreting Rule 42(a) F.R.Crim.P. have held that when criminal contempt is in question summary disposition should be the exception: summary disposition should be reserved for situations where it is necessary to protect the judicial institution. 3 Wright, *Federal Practice & Procedure—Criminal* §707 (1969). Those cases are equally pertinent to the application of this rule and, therefore, contemptuous conduct in the presence of the judge may often be punished only after the notice and hearing requirements of subdivision (b) are satisfied.

If the bankruptcy court concludes it is without power to punish or to impose the proper punishment for conduct which constitutes contempt, subdivision (a)(3) authorizes the bankruptcy court to certify the matter to the district court.

Subdivision (b) makes clear that when a person has a constitutional or statutory right to a jury trial in a criminal contempt matter this rule in no way affects that right. See *Frank v. United States*, 395 U.S. 147 (1969).

The Federal Rules of Civil Procedure do not specifically provide the procedure for the imposition of civil contempt sanctions. The decisional law governing the procedure for imposition of civil sanctions by the district courts will be equally applicable to the bankruptcy courts.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The United States Bankruptcy Courts, as constituted under the Bankruptcy Reform Act of 1978, were courts of law, equity, and admiralty with an inherent contempt power, but former 28 U.S.C. §1481 restricted the criminal contempt power of bankruptcy judges. Under the 1984 amendments, bankruptcy judges are judicial officers of the district court, 28 U.S.C. §§151, 152(a)(1). There are no decisions by the courts of appeals concerning the authority of bankruptcy judges to punish for either civil or criminal contempt under the 1984 amendments. This rule, as amended, recognizes that bankruptcy judges may not have the power to punish for contempt.

Sound judicial administration requires that the initial determination of whether contempt has been committed should be made by the bankruptcy judge. If timely objections are not filed to the bankruptcy judge’s order, the order has the same force and effect as an order of the district court. If objections are filed within 10 days of service of the order, the district court conducts a de novo review pursuant to Rule 9033 and any order of contempt is entered by the district court

on completion of the court’s review of the bankruptcy judge’s order.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

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

COMMITTEE NOTES ON RULES—2001 AMENDMENT

The amendments to this rule cover a motion for an order of contempt filed by the United States trustee or a party in interest. This rule, as amended, does not address a contempt proceeding initiated by the court sua sponte.

Whether the court is acting on motion under this rule or is acting sua sponte, these amendments are not intended to extend, limit, or otherwise affect either the contempt power of a bankruptcy judge or the role of the district judge regarding contempt orders. Issues relating to the contempt power of bankruptcy judges are substantive and are left to statutory and judicial development, rather than procedural rules.

This rule, as amended in 1987, delayed for ten days from service the effectiveness of a bankruptcy judge’s order of contempt and rendered the order subject to de novo review by the district court. These limitations on contempt orders were added to the rule in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which provides that bankruptcy judges are judicial officers of the district court, but does not specifically mention contempt power. See 28 U.S.C. §151. As explained in the committee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed concerning the authority of a bankruptcy judge to punish for either civil or criminal contempt under the 1984 Act and, therefore, the rule as amended in 1987 “recognizes that bankruptcy judges may not have the power to punish for contempt.” Committee Note to 1987 Amendments to Rule 9020.

Since 1987, several courts of appeals have held that bankruptcy judges have the power to issue civil contempt orders. See, e.g., *Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d 609 (5th Cir. 1997); *In re Rainbow Magazine, Inc.*, 77 F.3d 278 (9th Cir. 1996). Several courts have distinguished between a bankruptcy judge’s civil contempt power and criminal contempt power. See, e.g., *Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d at 613, n. 3 (“[a]lthough we find that bankruptcy judge’s [sic] can find a party in civil contempt, we must point out that bankruptcy courts lack the power to hold persons in criminal contempt.”). For other decisions regarding criminal contempt power, see, e.g., *In re Raggar*, 3 F.3d 1174 (8th Cir. 1993); *Matter of Hipp, Inc.*, 895 F.2d 1503 (5th Cir. 1990). To the extent that Rule 9020, as amended in 1987, delayed the effectiveness of civil contempt orders and required de novo review by the district court, the rule may have been unnecessarily restrictive in view of judicial decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt.

Subdivision (d), which provides that the rule shall not be construed to impair the right to trial by jury, is deleted as unnecessary and is not intended to deprive any party of the right to a jury trial when it otherwise exists.

Changes Made After Publication and Comments. No changes were made in the text of the proposed amendments. Stylistic changes were made to the Committee Note.

Rule 9021. Entry of Judgment

Except as otherwise provided herein, Rule 58 F.R.Civ.P. applies in cases under the Code. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. The reference in Rule 58 F.R.Civ.P. to Rule 79(a)