

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Motions to reopen cases are governed by Rule 5010. Reconsideration of orders allowing and disallowing claims is governed by Rule 3008. For the purpose of this rule all orders of the bankruptcy court are subject to Rule 60 F.R.Civ.P.

Pursuant to §727(e) of the Code a complaint to revoke a discharge must be filed within one year of the entry of the discharge or, when certain grounds of revocation are asserted, the later of one year after the entry of the discharge or the date the case is closed. Under §1144 and §1330 of the Code a party must file a complaint to revoke an order confirming a chapter 11 or 13 plan within 180 days of its entry. Clauses (2) and (3) of this rule make it clear that the time periods established by §§727(e), 1144 and 1330 of the Code may not be circumvented by the invocation of F.R.Civ.P. 60(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Clause (3) is amended to include a reference to §1230 of the Code which contains time limitations relating to revocation of confirmation of a chapter 12 plan. The time periods prescribed by §1230 may not be circumvented by the invocation of F.R.Civ.P. 60(b).

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

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 9025. Security: Proceedings Against Sureties

Whenever the Code or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is an adaptation of Rule 65.1 F.R.Civ.P. and applies to any surety on a bond given pursuant to §303(e) of the Code, Rules 2001, 2010, 5008, 7062, 7065, 8005, or any other rule authorizing the giving of such security.

Rule 9026. Exceptions Unnecessary

Rule 46 F.R.Civ.P. applies in cases under the Code.

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 9027. Removal

(a) NOTICE OF REMOVAL.

(1) *Where Filed; Form and Content.* A notice of removal shall be filed with the clerk of the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or

cause of action the proceeding is core or non-core and, if non-core, that the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy judge, and be accompanied by a copy of all process and pleadings.

(2) *Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under §362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) *Time for filing; civil action initiated after commencement of the case under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) NOTICE. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.

(c) FILING IN NON-BANKRUPTCY COURT. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(d) REMAND. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.

(e) PROCEDURE AFTER REMOVAL.

(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or

denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 10 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

(f) **PROCESS AFTER REMOVAL.** If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.

(g) **APPLICABILITY OF PART VII.** The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 20 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 20 days following the service of summons on such initial pleading, or within five days following the filing of the notice of removal, whichever period is longest.

(h) **RECORD SUPPLIED.** When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the court, and all process awarded, as if certified copies had been filed.

(i) **ATTACHMENT OR SEQUESTRATION; SECURITIES.** When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.

(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

Under 28 U.S.C. §1478(a) “any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce [a] . . . regulatory or police power” may be removed “if the bankruptcy courts have jurisdiction over such claim or cause of action.” This rule specifies how removal is accomplished, the procedure thereafter, and the procedure to request remand of the removed claim or cause of action. If the claim or cause of action which is removed to the bankruptcy court is subject to the automatic stay of §362 of the Code, the litigation may not proceed in the bankruptcy court until relief from the stay is granted.

The subdivisions of this rule conform substantially to 28 U.S.C. §§1446-1450 and Rule 81(a) F.R.Civ.P. pertaining to removal to the district courts.

Subdivision (a)(1) is derived from 28 U.S.C. §1446(a).

Subdivisions (a)(2) and (a)(3) are derived from paragraphs one and two of 28 U.S.C. §1446(b). Timely exercise of the right to remove is as important in bankruptcy cases as in removals from a state court to a district court.

Subdivision (a)(2) governs the situation in which there is litigation pending and a party to the litigation becomes a debtor under the Code. Frequently, removal would be of little utility in such cases because the pending litigation will be stayed by §362(a) on commencement of the case under the Code. As long as the stay remains in effect there is no reason to impose a time limit for removal to the bankruptcy court and, therefore, clause (B) of subdivision (a)(2) provides that a removal application may be filed within 30 days of entry of an order terminating the stay. Parties to stayed litigation will not be required to act immediately on commencement of a case under the Code to protect their right to remove. If the pending litigation is not stayed by §362(a) of the Code, the removal application must ordinarily be filed within 90 days of the order for relief. Clause (C) contains an alternative period for a chapter 11 case. If a trustee is appointed, the removal application may be filed within 30 days of the trustee's qualification, provided that the removal application is filed not more than 180 days after the order for relief.

The removal application must be filed within the longest of the three possible periods. For example, in a chapter 11 case if the 90 day period expires but a trustee is appointed shortly thereafter, the removal application may be filed within 30 days of the trustee's qualification but not later than 180 days after the order for relief. Nevertheless, if the claim or cause of action in the civil action is stayed under §362, the application may be filed after the 180 day period expires, provided the application is filed within 30 days of an order terminating the stay.

Subdivision (a)(3) applies to the situation in which the case under the Code is pending when the removable claim or cause of action is asserted in a civil action initiated in other than the bankruptcy court. The time for filing the application for removal begins to run on receipt of the first pleading containing the removable claim or cause of action. Only litigation not stayed by the Code or by court order may properly be initiated after the case under the Code is commenced. See *e.g.*, §362(a).

Subdivision (b). With one exception, this subdivision is the same as 28 U.S.C. §1446(d). The exemption from the bond requirement is enlarged to include a trustee or debtor in possession. Complete exemption from the bond requirement for removal is appropriate because of the limited resources which may be available at the beginning of a case and the small probability that an action will be improperly removed.

Recovery on the bond is permitted only when the removal was improper. If the removal is proper but the

bankruptcy court orders the action remanded on equitable grounds, 28 U.S.C. §1478(b), there is no recovery on the bond.

Subdivisions (c) and (d) are patterned on 28 U.S.C. §1446(e).

Subdivision (e). There is no provision in the Federal Rules of Civil Procedure for seeking remand. The first sentence of this subdivision requires that a request for remand be by motion and that the moving party serve all other parties; however, no hearing is required. In recognition of the intrusion of the removal practice on the state and federal courts from which claims or causes of action are removed, the subdivision directs the bankruptcy court to decide remand motions as soon as practicable. The last sentence of this subdivision is derived from 28 U.S.C. §1446(c).

Subdivisions (f) and (g), with appropriate changes to conform them to the bankruptcy context, are the same as 28 U.S.C. §1447(a) and (b) and 28 U.S.C. §1448, respectively.

Subdivisions (h) and (i) are taken from Rule 81(c) F.R.Civ.P.

Subdivisions (j) and (k) are derived from 28 U.S.C. §1449 and §1450, respectively.

Remand orders of bankruptcy judges are not appealable. 28 U.S.C. §1478(b).

This rule does not deal with the question whether a single plaintiff or defendant may remove a claim or cause of action if there are two or more plaintiffs or defendants. See 28 U.S.C. §1478.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Section 1452 of title 28, with certain exceptions, provides for removal of claims or causes of action in civil actions pending in state or federal courts when the claim or cause of action is within the jurisdiction conferred by 28 U.S.C. §1334. An order granting or denying a motion for remand is not appealable. 28 U.S.C. §1452(b). Under subdivision (e), as amended, the district court must enter the order on the remand motion; however, the bankruptcy judge conducts the initial hearing on the motion and files a report and recommendation. The parties may file objections. Review of the report and recommendation is pursuant to Rule 9033.

Subdivision (f) has been amended to provide that if there has been a referral pursuant to 28 U.S.C. §157(a) the bankruptcy judge will preside over the removed civil action.

Subdivision (i) has been abrogated consistent with the abrogation of Rule 9015.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The abrogation of subdivision (b) is consistent with the repeal of 28 U.S.C. §1446(d). The changes substituting the notice of removal for the application for removal conform to the 1988 amendments to 28 U.S.C. §1446.

Rules 7008(a) and 7012(b) were amended in 1987 to require parties to allege in pleadings whether a proceeding is core or non-core and, if non-core, whether the parties consent to the entry of final orders or judgment by the bankruptcy judge. Subdivision (a)(1) is amended and subdivision (f)(3) is added to require parties to a removed claim or cause of action to make the same allegations. The party filing the notice of removal must include the allegation in the notice and the other parties who have filed pleadings must respond to the allegation in a separate statement filed within 10 days after removal. However, if a party to the removed claim or cause of action has not filed a pleading prior to removal, there is no need to file a separate statement under subdivision (f)(3) because the allegation must be included in the responsive pleading filed pursuant to Rule 7012(b).

Subdivision (e), redesignated as subdivision (d), is amended to delete the restriction that limits the role of the bankruptcy court to the filing of a report and

recommendation for disposition of a motion for remand under 28 U.S.C. §1452(b). This amendment is consistent with §309(c) of the Judicial Improvements Act of 1990, which amended §1452(b) so that it allows an appeal to the district court of a bankruptcy court's order determining a motion for remand. This subdivision is also amended to clarify that the motion is a contested matter governed by Rule 9014. The words "filed with the clerk" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (a)(3) is amended to clarify that if a claim or cause of action is initiated after the commencement of a bankruptcy case, the time limits for filing a notice of removal of the claim or cause of action apply whether the case is still pending or has been suspended, dismissed, or closed.

Changes Made After Publication and Comments. No changes were made.

Rule 9028. Disability of a Judge

Rule 63 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

This rule is an adaptation of Rule 63 F.R.Civ.P.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Rule 9028 has been changed to adopt the procedures contained in Rule 63 of the Federal Rules of Civil Procedure for substituting a judge in the event of disability.

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 9029. Local Bankruptcy Rules; Procedure When There is No Controlling Law

(a) LOCAL BANKRUPTCY RULES.

(1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a non-willful failure to comply with the requirement.

(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any