

within seven days after receipt of notice of selection or shall be deemed to have rejected the office.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 209(c). The remainder of that rule is inapplicable because its provisions are covered by §§701-703, 321 of the Code.

If the person selected as trustee accepts the office, he must qualify within five days after his selection, as required by §322(a) of the Code.

In districts having a standing trustee for chapter 13 cases, a blanket acceptance of the appointment would be sufficient for compliance by the standing trustee with this rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The rule is amended to eliminate the need for a standing chapter 13 trustee or member of the panel of chapter 7 trustees to accept or reject an appointment.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The amendments to this rule relating to the United States trustee are derived from Rule X-1004(a) and conform to the 1986 amendments to the Code and 28 U.S.C. §586 which provide that the United States trustee appoints and supervises trustees, and in a chapter 7 case presides over any election of a trustee. This rule applies when a trustee is either appointed or elected. This rule is also amended to provide for chapter 12 cases.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) **ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED.** If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 of the Code.

(b) **RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE.** Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7.

(c) **APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.**

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered, the United

States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) *Chapter 12 Family Farmer's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 12 cases.

(4) *Chapter 13 Individual's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(d) **POTENTIAL CONFLICTS OF INTEREST.** On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) **SEPARATE ACCOUNTS.** The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Mar. 27, 2003, eff. Dec. 1, 2003.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is applicable in chapter 7 cases and, in part, in chapter 11 and 13 cases. The provisions in subdivisions (a) and (b) concerning creditor election of a trustee apply only in a chapter 7 case because it is only pursuant to §702 of the Code that creditors may elect a trustee. Subdivision (c) of the rule applies in chapter 11 and 13 as well as chapter 7 cases; pursuant to §1104 of the Code, the court may order the appointment of a trustee on application of a party in interest and, pursuant to §1163 of the Code, the court must appoint a trustee in a railroad reorganization case. Subdivision (c) should not be taken as an indication that more than one trustee may be appointed for a single debtor. Section 1104(c) permits only one trustee for each estate. In a chapter 13 case, if there is no standing trustee, the court is to appoint a person to serve as trustee pursuant to §1302 of the Code. There is no provision for a trustee in a chapter 9 case, except for a very limited purpose; see §926 of the Code.

This rule recognizes that economical and expeditious administration of two or more estates may be facilitated not only by the selection of a single trustee for a partnership and its partners, but by such selection whenever estates are being jointly administered pursuant to Rule 1015. See *In the Matter of International Oil Co.*, 427 F.2d 186, 187 (2d Cir. 1970). The rule is derived from former §5c of the Act and former Bankruptcy Rule 210. The premise of §5c of the Act was that notwithstanding the potentiality of conflict between the interests of the creditors of the partners and those of the creditors of the partnership, the conflict is not sufficiently serious or frequent in most cases to warrant the selection of separate trustees for the firm and the several partners. Even before the proviso was added to §5c of the Act in 1938 to permit the creditors of a general partner to elect their separate trustee for his estate, it was held that the court had discretion to permit such an election or to make a separate appointment when a conflict of interest was recognized. *In re Wood*, 248 Fed. 246, 249-50 (6th Cir.), cert. denied, 247 U.S. 512 (1918); 4 Collier, *Bankruptcy* ¶723.04 (15th ed. 1980). The rule retains in subdivision (e) the features of the practice respecting the selection of a trustee that was developed under §5 of the Act. Subdivisions (a) and (c) permit the court to authorize election of a single trustee or to make a single appointment when joint administration of estates of other kinds of debtors is ordered, but subdivision (d) requires the court to make a

preliminary evaluation of the risks of conflict of interest. If after the election or appointment of a common trustee a conflict of interest materializes, the court must take appropriate action to deal with it.

Subdivision (f) is derived from §5e of the Act and former Bankruptcy Rule 210(f) and requires that the common trustee keep a separate account for each estate in all cases that are jointly administered.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

One or more trustees may be appointed for estates being jointly administered in chapter 12 cases.

The amendments to this rule are derived from Rule X-1005 and are necessary because the United States trustee, rather than the court, has responsibility for appointing trustees pursuant to §§701, 1104, 1202, and 1302 of the Code.

If separate trustees are ordered for chapter 7 estates pursuant to subdivision (d), separate and successor trustees should be chosen as prescribed in §703 of the Code. If the occasion for another election arises, the United States trustee should call a meeting of creditors for this purpose. An order to select separate trustees does not disqualify an appointed or elected trustee from serving for one of the estates.

Subdivision (e) is abrogated because the exercise of discretion by the United States trustee, who is in the Executive Branch, is not subject to advance restriction by rule of court. *United States v. Cox*, 342 F.2d 167 (5th Cir. 1965), *cert. denied*, 365 U.S. 863 (1965); *United States v. Frumento*, 409 F.Supp. 136, 141 (E.D.Pa.), *aff'd*, 563 F.2d 1083 (3d Cir. 1977), *cert. denied*, 434 U.S. 1072 (1977); see, *Smith v. United States*, 375 F.2d 243 (5th Cir. 1967); House Report No. 95-595, 95th Cong., 1st Sess. 110 (1977). However, a trustee appointed by the United States trustee may be removed by the court for cause. See §324 of the Code. Subdivision (d) of this rule, as amended, is consistent with §324. Subdivision (f) is redesignated as subdivision (e).

COMMITTEE NOTES ON RULES—2003 AMENDMENT

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multi-lateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, neither the United States trustee nor the creditors can appoint or elect a trustee in these cases.

Other amendments are stylistic.

Changes Made After Publication and Comments. No changes since publication.

Rule 2010. Qualification by Trustee; Proceeding on Bond

(a) **BLANKET BOND.** The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

(b) **PROCEEDING ON BOND.** A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of the condition.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivisions (a) and (b). Subdivision (a) gives authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of

cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed, the trustee qualifies under subdivision (b) of the rule by filing an acceptance of the office.

Subdivision (c) prescribes the evidentiary effect of a certified copy of an order approving the trustee's bond given by a trustee under this rule or, when a blanket bond has been authorized, of a certified copy of acceptance. This rule supplements the Federal Rules of Evidence, which apply in bankruptcy cases. See Rule 1101 of the Federal Rules of Evidence. The order of approval should conform to Official Form No. 25. See, however, §549(c) of the Code which provides only for the filing of the petition in the real estate records to serve as constructive notice of the pendency of the case. See also Rule 2011 which prescribes the evidentiary effect of a certificate that the debtor is a debtor in possession.

Subdivision (d) is derived from former Bankruptcy Rule 212(f). Reference should be made to §322(a) and (d) of the Code which requires the bond to be filed with the bankruptcy court and places a two year limitation for the commencement of a proceeding on the bond. A bond filed under this rule should conform to Official Form No. 25. A proceeding on the bond of a trustee is governed by the rules in Part VII. See the Note accompanying Rule 7001. See also Rule 9025.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Subdivision (b) is deleted because of the amendment to Rule 2008.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to conform to the 1986 amendment of §322 of the Code. The United States trustee determines the amount and sufficiency of the trustee's bond. The amendment to subdivision (a) is derived from Rule X-1004(b).

Subdivision (b) is abrogated because an order approving a bond is no longer necessary in view of the 1986 amendments to §322 of the Code. Subdivision (c) is redesignated as subdivision (b).

Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee

(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

(b) If a person elected or appointed as trustee does not qualify within the time prescribed by §322(a) of the Code, the clerk shall so notify the court and the United States trustee.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule prescribes the evidentiary effect of a certificate issued by the clerk that the debtor is a debtor in possession. See Official Form No. 26. Only chapter 11 of the Code provides for a debtor in possession. See §1107(a) of the Code. If, however, a trustee is appointed in the chapter 11 case, there will not be a debtor in possession. See §§1101(1), 1105 of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to provide a procedure for proving that a trustee has qualified in accordance with §322 of the Code. *Subdivision (b)* is added so that the court and the United States trustee will be informed if the person selected as trustee pursuant to §§701, 702, 1104,