

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Bankruptcy Rule 603. The Act contained, in §70d, a provision placing the burden of proof on the same person as did Rule 603. The Code does not contain any directive with respect to the burden of proof. This omission, in all probability, resulted from the intention to leave matters affecting evidence to these rules. See H. Rep. No. 95-595, 95th Cong. 1st Sess. (1977) 293.

**Rule 6002. Accounting by Prior Custodian of Property of the Estate**

(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.

(b) EXAMINATION OF ADMINISTRATION. On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examination has been made into the supervised administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

(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

"Custodian" is defined in §101(10) of the Code. The definition includes a trustee or receiver appointed in proceedings not under the Code, as well as an assignee for the benefit of creditors.

This rule prescribes the procedure to be followed by a custodian who under §543 of the Code is required to deliver property to the trustee and to account for its disposition. The examination under subdivision (b) may be initiated (1) on the motion of the custodian required to account under subdivision (a) for an approval of his account and discharge thereon, (2) on the motion of, or the filing of an objection to the custodian's account by, the trustee or any other party in interest, or (3) on the court's own initiative. Rule 9014 applies to any contested matter arising under this rule.

Section 543(d) is similar to an abstention provision. It grants the bankruptcy court discretion to permit the custodian to remain in possession and control of the property. In that event, the custodian is excused from complying with §543(a)-(c) and thus would not be required to turn over the property to the trustee. When there is no duty to turn over to the trustee, Rule 6002 would not be applicable.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to enable the United States trustee to review, object to, or to otherwise be heard regarding the custodian's report and accounting. See §§307 and 543 of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1993  
AMENDMENT

*Subdivision (b)* is amended to conform to the language of §102(1) of the Code.

**Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case—Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts**

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the

court shall not, within 21 days after the filing of the petition, grant relief regarding the following:

- (a) an application under Rule 2014;
- (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; and
- (c) a motion to assume or assign an executory contract or unexpired lease in accordance with §365.

(Added Apr. 30, 2007; eff. Dec. 1, 2007; amended Mar. 26, 2009, eff. Dec. 1, 2009.)

## NOTES OF ADVISORY COMMITTEE ON RULES—1991

This rule [Former Rule 6003—Disbursement of Money of the Estate (Abrogated Apr. 30, 1991, eff. Aug. 1, 1991)] is abrogated in view of the role of the United States trustee in supervising trustees. Use of estate funds by a trustee or debtor in possession is governed by §363 of the Code.

## COMMITTEE NOTES ON RULES—2007

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include substantial amounts of materials for the court and parties in interest to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume or assign executory contracts and unexpired leases for the first 20 days of the case, unless granting relief is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.

This rule does not govern motions and applications made more than 20 days after the filing of the petition.

*Changes After Publication.* Subdivision (c) was amended by deleting the reference to the rejection of executory contracts or unexpired leases. The rule, as revised, now limits only the assumption or assignment of executory contracts or unexpired leases in that subdivision.

## 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 6004. Use, Sale, or Lease of Property**

(a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF PROPERTY. Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with §363(b)(2) of the Code.

(b) OBJECTION TO PROPOSAL. Except as provided in subdivisions (c) and (d) of this rule, an objec-