

Many of these rules were amended to implement the United States trustee system in accordance with the 1986 Act. Since the provisions of the 1986 Act relating to the United States trustee system are not effective in cases in Alabama and North Carolina in which a bankruptcy administrator is serving, rules referring to United States trustees are at least partially inconsistent with the provisions of the Bankruptcy Code and title 28 of the United States Code effective in such cases.

In determining the applicability of these rules in cases in Alabama and North Carolina in which a United States trustee is not authorized to act, the following guidelines should be followed:

(1) The following rules do not apply because they are inconsistent with the provisions of the Code or title 28 in these cases: 1002(b), 1007(1), 1009(c), 2002(k), 2007.1(b), 2015(a)(6), 2020, 3015(b), 5005(b), 7004(b)(10), 9003(b), and 9034.

(2) The following rules are partially inconsistent with the provisions of the Code effective in these cases and, therefore, are applicable with the following modifications:

(a) *Rule 2001(a) and (c)*—The court, rather than the United States trustee, appoints the interim trustee.

(b) *Rule 2003*—The duties of the United States trustee relating to the meeting of creditors or equity security holders are performed by the officer determined in accordance with regulations of the Judicial Conference, guidelines of the Director of the Administrative Office, local rules or court orders.

(c) *Rule 2007*—The court, rather than the United States trustee, appoints committees in chapter 9 and chapter 11 cases.

(d) *Rule 2008*—The bankruptcy administrator, rather than the United States trustee, informs the trustee of how to qualify.

(e) *Rule 2009(c) and (d)*—The court, rather than the United States trustee, appoints interim trustees in chapter 7 cases and trustees in chapter 11, 12 and 13 cases.

(f) *Rule 2010*—The court, rather than the United States trustee, determines the amount and sufficiency of the trustee's bond.

(g) *Rule 5010*—The court, rather than the United States trustee, appoints the trustee when a case is reopened.

(3) All other rules are applicable because they are consistent with the provisions of the Code and title 28 effective in these cases, except that any reference to the United States trustee is not applicable and should be disregarded.

Many of the amendments to the rules are designed to give the United States trustee, a member of the Executive Branch, notice of certain developments and copies of petitions, schedules, pleadings, and other papers. In contrast, the bankruptcy administrator is an officer in the Judicial Branch and matters relating to notice of developments and access to documents filed in the clerk's office are governed by regulations of the Judicial Conference of the United States, guidelines of the Administrative Office of the United States Courts, local rules, and court orders. Also, requirements for disclosure of connections with the bankruptcy administrator in applications for employment of professional persons, restrictions on appointments of relatives of bankruptcy administrators, effects of erroneously filing papers with the bankruptcy administrator, and other matters not covered by these rules may be governed by regulations of the Judicial Conference, guidelines of the Director of the Administrative Office, local rules, and court orders.

This rule will cease to have effect if a United States trustee is authorized in every case in the districts in Alabama and North Carolina.

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

Certain statutes that are not codified in title 11 or title 28 of the United States Code, such as §105 of the

Bankruptcy Reform Act of 1994, Pub. L. 103-394, 108 Stat. 4106, relate to bankruptcy administrators in the judicial districts of North Carolina and Alabama. This amendment makes it clear that the Bankruptcy Rules do not apply to the extent that they are inconsistent with these federal statutes.

GAP Report on Rule 9035. No changes to the published draft.

Rule 9036. Notice by Electronic Transmission

Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.

(Added Apr. 22, 1993, eff. Aug. 1, 1993; amended Apr. 25, 2005, eff. Dec. 1, 2005.)

NOTES OF ADVISORY COMMITTEE ON RULES—1993

This rule is added to provide flexibility for banks, credit card companies, taxing authorities, and other entities that ordinarily receive notices by mail in a large volume of bankruptcy cases, to arrange to receive by electronic transmission all or part of the information required to be contained in such notices.

The use of electronic technology instead of mail to send information to creditors and interested parties will be more convenient and less costly for the sender and the receiver. For example, a bank that receives by mail, at different locations, notices of meetings of creditors pursuant to Rule 2002(a) in thousands of cases each year may prefer to receive only the vital information ordinarily contained in such notices by electronic transmission to one computer terminal.

The specific means of transmission must be compatible with technology available to the sender and the receiver. Therefore, electronic transmission of notices is permitted only upon request of the entity entitled to receive the notice, specifying the type of electronic transmission, and only if approved by the court.

Electronic transmission pursuant to this rule completes the notice requirements. The creditor or interested party is not thereafter entitled to receive the relevant notice by mail.

COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to delete the requirement that the sender of an electronic notice must obtain electronic confirmation that the notice was received. The amendment provides that notice is complete upon transmission. When the rule was first promulgated, confirmation of receipt of electronic notices was commonplace. In the current electronic environment, very few internet service providers offer the confirmation of receipt service. Consequently, compliance with the rule may be impossible, and the rule could discourage the use of electronic noticing.

Confidence in the delivery of email text messages now rivals or exceeds confidence in the delivery of printed materials. Therefore, there is no need for confirmation of receipt of electronic messages just as there is no such requirement for paper notices.

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

Rule 9037. Privacy Protection For Filings Made with the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's so-

cial-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

(b) **EXEMPTIONS FROM THE REDACTION REQUIREMENT.** The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding unless filed with a proof of claim;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by subdivision (c) of this rule; and
- (6) a filing that is subject to §110 of the Code.

(c) **FILINGS MADE UNDER SEAL.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.

(d) **PROTECTIVE ORDERS.** For cause, the court may by order in a case under the Code:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) **OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL.** An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) **OPTION FOR FILING A REFERENCE LIST.** A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) **WAIVER OF PROTECTION OF IDENTIFIERS.** An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.

(Added Apr. 30, 2007, eff. Dec. 1, 2007.)

COMMITTEE NOTES ON RULES—2007

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” The rule goes further than the E-Government Act in regulating paper filings even when they

are not converted to electronic form, but the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. See <http://www.privacy.uscourts.gov/Policy.htm>. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain “personal data identifiers” are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social-security number. It may also be necessary to protect information not covered by the redaction requirement—such as driver's license numbers and alien registration numbers—in a particular case. In such cases, protection may be sought under subdivision (c) or (d). Moreover, the rule does not affect the protection available under other rules, such as Rules 16 and 26(c) of the Federal Rules of Civil Procedure, or under other sources of protective authority.

Any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should therefore notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

An individual debtor's full social-security number or taxpayer-identification number is included on the notice of the §341 meeting of creditors sent to creditors. Of course, that is not filed with the court, see Rule 1007(f) (the debtor “submits” this information), and the copy of the notice that is filed with the court does not include the full social-security number or taxpayer-identification number. Thus, since the full social-security number or taxpayer-identification number is not filed with the court, it is not available to a person searching that record.

The clerk is not required to review documents filed with the court for compliance with this rule. As subdivision (a) recognizes, the responsibility to redact filings rests with counsel, parties, and others who make filings with the court.

Subdivision (d) recognizes the court's inherent authority to issue a protective order to prevent remote access to private or sensitive information and to require redaction of material in addition to that which would be redacted under subdivision (a) of the rule. These orders may be issued whenever necessary either by the court on its own motion, or on motion of a party in interest.

Subdivision (e) allows an entity that makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (f) allows the option to file a reference list of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (f) of the rule refers to “redacted” information. The term “redacted” is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (g) allows an entity to waive the protections of the rule as to that entity's own information by filing it in unredacted form. An entity may elect to

waive the protection if, for example, it is determined that the costs of redaction outweigh the benefits to privacy. As to financial account numbers, the instructions to Schedules E and F of Official Form 6 note that the debtor may elect to include the complete account number on those schedules rather than limit the number to the final four digits. Including the complete number would operate as a waiver by the debtor under subdivision (g) as to the full information that the debtor set out on those schedules. The waiver operates only to the extent of the information that the entity filed without redaction. If an entity files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 9037 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with this rule if and when they are filed as part of an appeal or for other reasons.

Changes After Publication. Rule 9037 is intended to parallel as closely as possible Civil Rule 5.2 and Criminal Rule 49.1. The Advisory Committees have worked together to maintain as much consistency as possible in the three versions of the rule. The rule has been revised to implement the several style revisions suggested by the Style Subcommittee of the Standing Committee. Subdivision (b) was reorganized and renumbered. Subdivisions (b)(1) and (b)(3) were added in response to suggestions by the Department of Justice. Subdivision (b)(4), formerly subdivision (b)(2), was amended in response to the suggestion of the Committee on Court Administration and Case Management so that the subdivision now refers to court records that become a part of the record in the pending matter. The term "entity" has been substituted for "person" in subdivision (c) and for "party" in subdivisions (e) and (f) to conform the rule to the definitions provided in the Bankruptcy Code.

[PART X—UNITED STATES TRUSTEES]
(Abrogated Apr. 30, 1991, eff. Aug. 1, 1991)

OFFICIAL FORMS

[NOTE: *These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Rule 9009.*]

INTRODUCTION AND GENERAL INSTRUCTIONS

Rule 9009 of the Federal Rules of Bankruptcy Procedure states that the Official Forms prescribed by the Judicial Conference of the United States "shall be observed and used." The Official Forms, accordingly, are obligatory in character.

Rule 9009 expressly permits the user of the Official Forms to make such "alterations as may be appropriate," and the use of the Official Forms has been held to be subject to a "rule of substantial compliance." Some rules, for example Fed.R.Bankr.P. 3001(a), specifically state that the filed document need only "conform substantially" to the Official Form. A document for which an Official Form is prescribed generally will meet the standard of substantial compliance if the document contains the complete substance, that is, all of the information required by the Official Form.

Rule 9009 also expressly permits the contents of Official Forms to be rearranged, and the format of the Official Forms traditionally has been quite flexible. The forms of the voluntary petition, the schedules, and the statement of financial affairs are printed and sold by private publishers. Design features such as type face, type size, layout, and side and top margins were not prescribed by the Judicial Conference, but rather left to the professional judgment of each publisher.

A great deal of variation, accordingly, has developed. Some publishers also add forms that are not official but which have been drafted by the publisher. A form for a chapter 13 plan, for example, frequently is included with commercially printed packages of forms for filing

cases under chapter 13, although there is no Official Form for this purpose. The variety of formats has accelerated since the introduction of computer software for generating the petitions, schedules, and statements of affairs. It is the policy of the Judicial Conference that such diversity is desirable and should be encouraged.

The sheer volume of bankruptcy cases, however, has compelled the Judicial Conference, for the first time, to prescribe the format of certain Official Forms. In particular, the format of Form 1, the Voluntary Petition, now is prescribed. This format is designed to assist the clerk of the bankruptcy court to enter the case in the court's computer database and ensures that all required information is available to both the clerk and the United States trustee at the inception of the case. The rule of substantial compliance continues to apply, however. Accordingly, publishers may vary the size and style of the type and may alter the size and shape of the boxes on the form, within the bounds of that rule.

The Official Forms of the petitions, schedules, and statement of financial affairs, (Forms 1, 5, 6, and 7), are to be printed on one side of the paper only. Each page is to be prepunched with two holes at the top, and sufficient top margin allowed so that neither caption nor text is destroyed or obscured. Compliance with these standards will facilitate both the securing of the papers in the case file and review of the file by the public.

Although Rule 9009 permits alteration, for most of the Official Forms, alteration will be appropriate only in rare circumstances. The special forms for chapter 11 cases, on the other hand, seldom will be used without alterations. Forms 12 through 15, while legally sufficient in any chapter 11 case, are intended by the Judicial Conference, and most often will be used, as a framework for drafting a document specially tailored to the particular case. These alterations generally will take the form of additions to the prescribed elements.

Rule 9009 provides for a balance of prescribed substance, to which full adherence is expected in all but the most unusual cases, and flexible formatting, under which requirements are kept to the minimum necessary for proper operation of the courts and the bankruptcy system. While Rule 9009 recognizes the overall need for flexibility, Rule 9029 makes it clear that the Official Forms must be accepted in every bankruptcy court.

Under Rule 9029, courts may not reject documents presented for filing in novel or unfamiliar formats if those documents contain the substance prescribed by the Official Form and meet the requirements for one-sided printing, pre-punched holes, and adequate top margins. Nor are courts authorized to impose local forms which vary in substance from the Official Forms or reject papers presented for filing on Official Forms on the basis that the proffered documents differ from a locally preferred version.

SPECIAL INSTRUCTIONS FOR COMPUTER-GENERATED FORMS

In Form 1, the Voluntary Petition, if a box contains multiple choices, a computer-generated petition that shows only the choice made is acceptable for filing. All sections of the petition must be shown and completed, however, unless instructions on the Official Form of the petition state that the box is applicable only to cases filed under a chapter other than the one selected by the debtor. If the debtor has no information to provide for a particular box, for example if the debtor has no prior bankruptcies to report, a computer-generated petition should so indicate by stating "None."

Form 6, the Schedules, on which the debtor reports all of the debtor's assets and liabilities, has been prescribed in a columnar format. Columns help to organize the information which the debtor is required to report and should be used when the printed schedules are completed on a typewriter. In a computerized law office, however, the organizational structure of the schedules can be built into the computer program, and a rigid columnar format may be a hindrance rather than a help.