

husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of a husband and wife shall, if one spouse has elected the exemptions under § 522(b)(1) of the Code and the other has elected the exemptions under § 522(b)(2), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(1).

(c) Expediting and Protective Orders

When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a) of this rule is derived from former Bankruptcy Rule 117(a). It applies to cases when the same debtor is named in both voluntary and involuntary petitions, when husband and wife have filed a joint petition pursuant to § 302 of the Code, and when two or more involuntary petitions are filed against the same debtor. It also applies when cases are pending in the same court by virtue of a transfer of one or more petitions from another court. Subdivision (c) allows the court discretion regarding the order of trial of issues raised by two or more involuntary petitions against the same debtor.

Subdivision (b) recognizes the propriety of joint administration of estates in certain kinds of cases. The election or appointment of one trustee for two or more jointly administered estates is authorized by Rule 2009. The authority of the court to order joint administration under subdivision (b) extends equally to the situation when the petitions are filed under different sections, *e.g.*, when one petition is voluntary and the other involuntary, and when all of the petitions are filed under the same section of the Code.

Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. For illustrations of the substantive consolidation of separate estates, see *Sampson v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941). See also *Chemical Bank N.Y. Trust Co. v. Kheel*, 369 F.2d 845 (2d Cir. 1966); Seligson & Mandell, *Multi-Debtor Petition—Consolidation of Debtors and Due Process of Law*, 73 Com.L.J. 341 (1968); Kennedy, *Insolvency and the Corporate Veil in the United States in Proceedings of the 8th International Symposium on Comparative Law* 232, 248–55 (1971).

Joint administration as distinguished from consolidation may include combining the estates by using a

single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

Subdivision (c) is an adaptation of the provisions of Rule 42(a) F.R.Civ.P. for the purposes of administration of estates under this rule. The rule does not deal with filing fees when an order for the consolidation of cases or joint administration of estates is made.

A joint petition of husband and wife, requiring the payment of a single filing fee, is permitted by § 302 of the Code. Consolidation of such a case, however, rests in the discretion of the court; see § 302(b) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendment to subdivision (b) implements the provisions of § 522(b) of the Code, as enacted by the 1984 amendments.

Rule 1016. Death or Incompetency of Debtor

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Rules 118 and 11–16. In a chapter 11 reorganization case or chapter 13 individual's debt adjustment case, the likelihood is that the case will be dismissed.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to conform to 25 F.R.Civ.P. and to include chapter 12 cases.

Rule 1017. Dismissal or Conversion of Case; Suspension

(a) Voluntary Dismissal; Dismissal for Want of Prosecution or Other Cause

Except as provided in §§ 707(b), 1208(b), and 1307(b) of the Code, a case shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to a hearing on notice as provided in Rule 2002. For such notice the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other entity.

(b) Dismissal for Failure To Pay Filing Fee

(1) For failure to pay any installment of the filing fee, the court may after hearing on notice to the debtor and the trustee dismiss the case.

(2) If the case is dismissed or the case closed without full payment of the filing fee, the installments collected shall be distributed in the

same manner and proportions as if the filing fee had been paid in full.

(3) Notice of dismissal for failure to pay the filing fee shall be given within 30 days after the dismissal to creditors appearing on the list of creditors and to those who have filed claims, in the manner provided in Rule 2002.

(c) Suspension

A case shall not be dismissed or proceedings suspended pursuant to §305 of the Code prior to a hearing on notice as provided in Rule 2002(a).

(d) Procedure for Dismissal or Conversion

A proceeding to dismiss a case or convert a case to another chapter, except pursuant to §§706(a), 707(b), 1112(a), 1208(a) or (b), or 1307(a) or (b) of the Code, is governed by Rule 9014. Conversion or dismissal pursuant to §§706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013. A chapter 12 or chapter 13 case shall be converted without court order on the filing by the debtor of a notice of conversion pursuant to §§1208(a) or 1307(a), and the filing date of the notice shall be deemed the date of the conversion order for the purposes of applying §348(c) of the Code and Rule 1019. The clerk shall forthwith transmit to the United States trustee a copy of the notice.

(e) Dismissal of Individual Debtor's Chapter 7 Case for Substantial Abuse

An individual debtor's case may be dismissed for substantial abuse pursuant to §707(b) only on motion by the United States trustee or on the court's own motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and such other parties in interest as the court directs.

(1) A motion by the United States trustee shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to §341(a), unless, before such time has expired, the court for cause extends the time for filing the motion. The motion shall advise the debtor of all matters to be submitted to the court for its consideration at the hearing.

(2) If the hearing is on the court's own motion, notice thereof shall be served on the debtor not later than 60 days following the first date set for the meeting of creditors pursuant to §341(a). The notice shall advise the debtor of all matters to be considered by the court at the hearing.

(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

Subdivision (a) of this rule is derived from former Bankruptcy Rule 120(a). While the rule applies to voluntary and involuntary cases, the "consent of the parties" referred to is that of petitioning creditors and the debtor in an involuntary case. The last sentence recognizes that the court should not be confined to petitioning creditors in its choice of parties on whom to call for assistance in preparing the list of creditors when the debtor fails to do so. This subdivision implements §§303(j), 707, 1112 and 1307 of the Code by specifying the manner of and persons to whom notice shall be given and requiring the court to hold a hearing on the issue of dismissal.

Subdivision (b) is derived from former Bankruptcy Rule 120(b). A dismissal under this subdivision can occur only when the petition has been permitted to be filed pursuant to Rule 1006(b). The provision for notice in paragraph (3) is correlated with the provision in Rule 4006 when there is a waiver, denial, or revocation of a discharge. As pointed out in the Note accompanying Rule 4008, the purpose of notifying creditors of a debtor that no discharge has been granted is to correct their assumption to the contrary so that they can take appropriate steps to protect their claims.

Subdivision (c) is new and specifies the notice required for a hearing on dismissal or suspension pursuant to §305 of the Code. The suspension to which this subdivision refers is that of the case; it does not concern abatement of the court in hearing an adversary proceeding pursuant to 28 U.S.C. §1478(b).

Subdivision (d). Any proceeding, whether by a debtor or other party, to dismiss or convert a case under §§706, 707, 1112, or 1307 is commenced by a motion pursuant to Rule 9014.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Subdivision (d) is amended to provide that dismissal or conversion pursuant to §§706(a), 707(b), 1112(a), and 1307(b) is not automatically a contested matter under Rule 9014. Conversion or dismissal under these sections is initiated by the filing and serving of a motion as required by Rule 9013. No hearing is required on these motions unless the court directs.

Conversion of a chapter 13 case to a chapter 7 case as authorized by §1307(a) is accomplished by the filing of a notice of conversion. The notice of conversion procedure is modeled on the voluntary dismissal provision of Rule 41(a)(1) F.R.Civ.P. Conversion occurs on the filing of the notice. No court order is required.

Subdivision (e) is new and provides the procedure to be followed when a court on its own motion has made a preliminary determination that an individual debtor's chapter 7 case may be dismissed pursuant to §707(b) of the Code, which was added by the 1984 amendments. A debtor's failure to attend the hearing is not a ground for dismissal pursuant to §707(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (a) is amended to clarify that all entities required to receive notice under Rule 2002, including but not limited to creditors, are entitled to the 20 day notice of the hearing to dismiss the case. The United States trustee receives the notice pursuant to Rule 2002(k).

The word "petition" is changed to "case" in subdivisions (a), (b), and (c) to conform to §§707, 930, 1112, 1208, and 1307.

Subdivision (d) is amended to conform to §348(c) of the Code which refers to the "conversion order."

Subdivisions (a) and (d) are amended to provide procedures for dismissal or conversion of a chapter 12 case. Procedures for dismissal or conversion under §1208(a) and (b) are the same as the procedures for dismissal or conversion of a chapter 13 case under §1307(a) and (b).

Subdivision (e) is amended to conform to the 1986 amendment to §707(b) of the Code which permits the United States trustee to make a motion to dismiss a case for substantial abuse. The time limit for such a motion is added by this subdivision. In general, the facts that are the basis for a motion to dismiss under §707(b) exist at the time the case is commenced and usually can be discovered early in the case by reviewing the debtor's schedules and examining the debtor at the meeting of creditors. Since dismissal for substantial abuse has the effect of denying the debtor a discharge in the chapter 7 case based on matters which may be discovered early, a motion to dismiss under §707(b) is analogous to an objection to discharge pursuant to Rule 4004 and, therefore, should be required to be made within a specified time period. If matters relating

to substantial abuse are not discovered within the time period specified in subdivision (e) because of the debtor's false testimony, refusal to obey a court order, fraudulent schedules or other fraud, and the debtor receives a discharge, the debtor's conduct may constitute the basis for revocation of the discharge under § 727(d) and (e) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Subdivision (d) is amended to clarify that the date of the filing of a notice of conversion in a chapter 12 or chapter 13 case is treated as the date of the conversion order for the purpose of applying Rule 1019. Other amendments are stylistic and make no substantive change.

Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

The following rules in Part VII apply to all proceedings relating to a contested involuntary petition, to proceedings relating to a contested petition commencing a case ancillary to a foreign proceeding, and to all proceedings to vacate an order for relief: Rules 7005, 7008–7010, 7015, 7016, 7024–7026, 7028–7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise directs. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary petition, or contested ancillary petition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

The rules in Part VII to which this rule refers are adaptations of the Federal Rules of Civil Procedure for the purpose of governing the procedure in adversary proceedings in cases under the Code. See the Note accompanying Rule 7001 *infra*. Because of the special need for dispatch and expedition in the determination of the issues in an involuntary petition, see *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 309 (1911), the objective of some of the Federal Rules of Civil Procedure and their adaptations in Part VII to facilitate the settlement of multiple controversies involving many persons in a single lawsuit is not compatible with the exigencies of bankruptcy administration. See *United States F. & G. Co. v. Bray*, 225 U.S. 205, 218 (1912). For that reason Rules 7013, 7014 and 7018–7023 will rarely be appropriate in a proceeding on a contested petition.

Certain terms used in the Federal Rules of Civil Procedure have altered meanings when they are made applicable in cases under the Code by these rules. See Rule 9002 *infra*. This Rule 1018 requires that the terms "adversary proceedings" when used in the rules in Part VII and "complaint" when used in the Federal Rules of Civil Procedure be given altered meanings when they are made applicable to proceedings relating to a contested petition or proceedings to vacate any order for relief. A motion to vacate an order for relief, whether or not made on a petition that was or could have been contested, is governed by the rules in Part VII referred to in this Rule 1018.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Rule 1018 is amended to include within its terms a petition commencing an ancillary case when it is contested. This provision was formerly included in Rule 1003(e)(4).

Although this rule does not contain an explicit authorization for the entry of an order for relief when a debtor refuses to cooperate in discovery relating to a contested involuntary petition, the court has ample power under Rule 37(b) F.R.Civ.P., as incorporated by Rule 7037, to enter an order for relief under appropriate circumstances. Rule 37(b) authorizes the court to enter judgment by default or an order that "facts shall be taken as established."

Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) *Filing of Lists, Inventories, Schedules, Statements.*

(A) Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(B) The statement of intention, if required, shall be filed within 30 days following entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. An extension of time may be granted for cause only on motion made before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(2) *New Filing Periods.* A new time period for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence pursuant to Rules 3002, 4004, or 4007, provided that a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

(3) *Claims Filed in Superseded Case.* All claims actually filed by a creditor in the superseded case shall be deemed filed in the chapter 7 case.

(4) *Turnover of Records and Property.* After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in the possession or control of the debtor in possession or trustee.

(5) *Filing Final Report and Schedule of Post-petition Debts.* Unless the court directs other-