

AMENDMENTS TO THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME
COURT OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE THAT HAVE BEEN ADOPTED BY THE COURT, PURSUANT TO 28 U.S.C. 2075



APRIL 24, 1996.—Referred to the Committee on the Judiciary and ordered to be printed.

U.S. GOVERNMENT PRINTING OFFICE

**Supreme Court of the United States
Washington, D. C. 20543**

CHAMBERS OF
THE CHIEF JUSTICE

April 23, 1996

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Advisory Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,



Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006.

[See *infra.*, pp. _____.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 1996, and shall govern all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings in bankruptcy cases then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the filing fee except as provided in subdivision (b) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

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**Rule 1007. Lists, Schedules and
Statements; Time Limits**

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(c) TIME LIMITS. The schedules and statements, other than the statement of intention, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), and (h) of this rule. In an involuntary case the schedules and statements, other than the statement of intention, shall be filed by the debtor within 15 days after entry of the order for relief. Schedules and

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statements filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to the United States trustee and to any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. 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.

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**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:

* * * * *

**Rule 2002. Notices to Creditors, Equity
Security Holders, United States, and
United States Trustee**

(a) TWENTY-DAY NOTICES TO PARTIES IN
INTEREST. Except as provided in
subdivisions (h), (i), and (l) of this
rule, the clerk, or some other person as
the court may direct, shall give the
debtor, the trustee, all creditors and
indenture trustees at least 20 days'
notice by mail of:

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- (1) the meeting of creditors under § 341 of the Code;
- (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;
- (3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice

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not be sent;

- (4) in a chapter 7 liquidation, a chapter 11 reorganization case, and a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case, unless the hearing is under § 707(b) of the Code, or the conversion of the case to another chapter;
- (5) the time fixed to accept or reject a proposed modification of a plan;
- (6) hearings on all applications for compensation or reimbursement of expenses

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totaling in excess of \$500;

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

* * * * *

(c) CONTENT OF NOTICE.

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(2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts

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requested.

* * * * *

(f) OTHER NOTICES. Except as provided in subdivision (1) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of: (1) the order for relief;

* * * * *

and (8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed \$1,500. Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

* * * * *

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under § 341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors

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pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States

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trustee and be mailed only to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under § 1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

* * * * *

(k) NOTICES TO UNITED STATES TRUSTEE.

Unless the case is a chapter 9 municipality case or unless the United

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States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), and (f)(8) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in

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these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq.

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Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case

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(b) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this paragraph.

(c) CHAPTER 13 TRUSTEE AND DEBTOR.

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(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

* * * * *

**Rule 3002. Filing Proof of Claim
or Interest**

(a) **NECESSITY FOR FILING.** An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be

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allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.

* * * * *

(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of a governmental

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unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.

* * * * *

**Rule 3016. Filing of Plan and
Disclosure Statement in Chapter 9
Municipality and Chapter 11
Reorganization Cases**

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under § 1125 or evidence showing compliance with § 1126(b) of the

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Code shall be filed with the plan or within a time fixed by the court.

Rule 4004. Grant or Denial of Discharge

* * * * *

(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case pursuant to Rule 1017(e), the court shall forthwith grant the discharge unless:

(a) the debtor is not an individual,

(b) a complaint objecting to the discharge has been filed,

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- (c) the debtor has filed a waiver under § 727(a)(10),
- (d) a motion to dismiss the case pursuant to Rule 1017(e) is pending,
- (e) a motion to extend the time for filing a complaint objecting to discharge is pending, or
- (f) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to

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the clerk upon the commencement of a case under the Code.

(2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

* * * * *

Rule 5005. Filing and Transmittal of Papers

(a) **FILING.**

(1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other

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papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

(2) *Filing by Electronic Means.*

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A court may by local rule permit documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

* * * * *

**Rule 7004. Process; Service of Summons,
Complaint**

(a) SUMMONS; SERVICE; PROOF OF SERVICE. Rule 4(a), (b), (c)(1), (d)(1),

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(e)-(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service pursuant to Rule 4(e)-(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(b) SERVICE BY FIRST CLASS MAIL.

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e) -(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and

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complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's

dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

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(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant

to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing

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shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as

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trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

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(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive

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service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or statement of affairs or to such other address as the debtor may

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designate in a filed writing and, if the debtor is represented by an attorney, to the attorney at the attorney's post-office address.

(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to

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determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)-(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.

(d) NATIONWIDE SERVICE OF PROCESS.

The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

(e) SUMMONS: TIME LIMIT FOR SERVICE.

If service is made pursuant to Rule 4(e)-

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(j) F.R.Civ.P. it shall be made by delivery of the summons and complaint within 10 days following issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days following issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served.

(f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by

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these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

(g) [Abrogated]

(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. -- Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless --

(1) the institution has appeared by its attorney, in which case the

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attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Rule 8008. Filing and Service

(a) FILING. Papers required or permitted to be filed with the clerk of the district court or the clerk of the

RULES OF BANKRUPTCY PROCEDURE 37

bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by

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electronic means is authorized by local rule promulgated pursuant to Rule 8018.

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Rule 9006. Time

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(c) REDUCTION.

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(2) *Reduction Not Permitted.*

The court may not reduce the time for taking action pursuant to Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

* * * * *



L. RALPH MECHAM
DIRECTOR

CLARENCE A. LEE, JR.
ASSOCIATE DIRECTOR

October 12, 1995

**MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT**

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I have the honor to transmit herewith for the consideration of the Court proposed amendments to Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006 of the Federal Rules of Bankruptcy Procedure. The Judicial Conference recommends that these amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering these proposed amendments, I am also transmitting an excerpt from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference and the Report of the Advisory Committee on the Federal Rules of Bankruptcy Procedure.


L. Ralph Mecham

Enclosures

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
SEPTEMBER 1995**

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:

**II. AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

A. Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted to your committee proposed amendments to Bankruptcy Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006 together with Committee Notes explaining their purpose and intent. The proposed amendments were circulated to the bench and bar for comment in September 1994. The scheduled public hearing was canceled, because no request to appear was received by the committee.

Rule 1006 (*Filing Fee*) would be amended to include within the scope of the rule any fees prescribed by the Judicial Conference that are payable to the clerk on commencement of a case. The fees can be paid in installments.

The proposed amendments to Rule 1007 (*Lists, Schedules and Statements: Time Limits*) would provide that schedules and statements filed before conversion of a case to another chapter under the Bankruptcy Code are treated as filed in the converted case, regardless of the chapter in which the case was proceeding before conversion. Rule 1019(7) (*Conversion*) would be abrogated to conform to the abrogation of Rule 3002(c)(6).

Rule 2002 (*Notices*) would be amended in several respects. To reduce expenses in administering chapter 7 cases, the rule would be changed to eliminate the need to mail to all parties copies of the summary of the chapter 7 trustee's final account. The rule would continue to require the mailing of a summary of the trustee's final report. It would also clarify the need to send notices to certain creditors and eliminate cross references to certain abrogated provisions.

The proposed amendments to Rule 2015 (*Duty to Keep Records*) would clarify when a debtor in possession or trustee in a chapter 12 case or a debtor engaged in business in a chapter 13 case must file an inventory of the debtor's property.

Rule 3002 (*Filing Proof of Claim or Interest*) would be amended to make the rule consistent with §§ 502(b) and 726 of the Bankruptcy Code as amended by the (Bankruptcy Reform Act of 1994), which govern the treatment of tardily filed claims.

Rule 3016(a) (*Filing of Plan and Disclosure Statement*) would be abrogated, because it could have the effect of extending the debtor's exclusive period for filing a chapter 11 plan without the court - after notice and a hearing - finding cause for an extension as required by § 1121(d) of the Bankruptcy Code.

The proposed amendments to Rule 4004 (*Discharge*) would delay the debtor's discharge in a chapter 7 case if there is a pending motion to extend the time for filing a complaint objecting to discharge or if the filing fee has not been paid in full.

Rule 5005 (*Filing*) would be amended to permit filing by electronic means - a provision similar to changes proposed to the Appellate Rules and Civil Rules.

Proposed amendments to Rule 7004 (*Process, Service of Summons, Complaint*) would conform the rule to the 1993 amendments to Rule 4 of the Federal Rules of Civil Procedure.

Proposed amendments to Rule 8008 (*Filing and Service*) would permit district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules to allow filing, signing, or verification of documents by electronic means in the same manner and with the same limitations that are applicable to bankruptcy courts under Rule 5005, as amended.

Rule 9006 (*Time*) would be amended to conform the rule to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8).

The proposed amendments to the Federal Rules of Bankruptcy Procedure, as recommended by your committee, are in *Appendix B* together with an excerpt from the advisory committee report.

Recommendation: That the Judicial Conference approve proposed amendments to Bankruptcy Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Agenda F-19
(Appendix B)
Rules
September 1995

TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Paul Mannes, Chair
Advisory Committee on Bankruptcy Rules

DATE: June 1, 1995

RE: Report of the Advisory Committee on Bankruptcy Rules

Introduction

The Advisory Committee on Bankruptcy Rules met on March 30-31, 1995, in Lafayette, Louisiana. The Committee considered public comments regarding the proposed amendments to the Bankruptcy Rules that were published in September, 1994. After making several changes to the proposed amendments, the Committee approved them for presentation to the Standing Committee for final approval. The Committee then approved another package of proposed amendments for presentation to the Standing Committee with a request for publication for comment by the bench and bar. Most of the proposed amendments presented with a request for publication are designed to implement provisions of the Bankruptcy Reform Act of 1994. Both packages of proposed amendments are discussed in the section of this report on "Action Items."

I. Action Items

A. Proposed Amendments to Bankruptcy Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006 Submitted for Approval by the Standing Committee and Transmittal to the Judicial Conference.

These proposed amendments were published for comment by the bench and bar in September 1994. Letters were received from eleven commentators (nine letters were received prior to the March meeting; two were received after the March meeting because they were mailed to the House Judiciary Committee). Eight letters commented on particular rules (Rules 2002, 3002, 5005, and 7004) and are discussed below following the text of the relevant proposed amendment. The following three letters contain only general statements regarding all published rules:

(1) Robert L. Jones III, President of the Arkansas Bar Association commented that "[w]e agree with the proposed amendments to the Federal Rules of Bankruptcy Procedure."

(2) Lee Ann Huntington, Chair of the Committee on Federal Courts of the State Bar of California, wrote that the Committee on Federal Courts "enthusiastically support the proposed amendments."

(3) Raymond A. Noble, Esq., Director of Legal Affairs, New Jersey State Bar Association, dated February 24, 1995, informed the Advisory Committee that the Bankruptcy Practice Section of the State Bar Association "concluded that the changes that affect bankruptcy practice are ministerial and do not require comment."

Bryan Garner, consultant on style, also suggested certain stylistic improvements. These suggestions were considered by the Advisory Committee at its March 1995 meeting and, as a result, a number of Mr. Garner's suggestions have been implemented.

1. Synopsis of Proposed Amendments

(a) Rule 1006(a) is amended to include within the scope of the rule any fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) that is payable to the clerk upon commencement of a case. This fee will be payable in installments in the same manner that the filing fee prescribed by 28 U.S.C. § 1930(a) is payable in installments pursuant to Rule 1006(b).

(b) Rule 1007(c) is amended to provide that schedules and statements filed prior to conversion of a case to another chapter are treated as filed in the converted case, regardless of the chapter the case was in prior to conversion. The rule now provides that schedules and statements filed prior to conversion are treated as filed in the converted case only if the case was in chapter 7 prior to conversion. Since 1991, the same official forms for schedules and statements have been used in all cases and, therefore, limiting this provision to cases that were in chapter 7 prior to conversion is no longer necessary.

(c) Rule 1019(7) is abrogated. Subdivision (7) provides that, in a case converted to chapter 7, an extension of time to file claims against a surplus granted pursuant to Rule 3002(c)(6) shall be applicable to postpetition, pre-conversion claims. This subdivision is abrogated to conform to the abrogation of Rule 3002(c)(6).

(d) Rule 2002, which governs notices, is amended in several respects. Subdivision (a)(4) -- requiring notice of the time for filing claims against a surplus in a chapter 7 case -- is abrogated to conform to the abrogation of Rule 3002(c)(6) (see below). To reduce expenses in administering chapter 7 cases, subdivision (f)(8) is amended to eliminate the need to mail to all parties copies of the summary of the chapter 7 trustee's final account. Subdivision (h), which permits the court to eliminate the need to send notices to creditors who have failed to file claims, is revised in several ways: (1) to clarify that such an order may not be issued if creditors still have time to file claims because it is a "no asset" case and a "notice of no dividend" has been sent; (2) to clarify that an order under this subdivision does not affect notices that must be sent to parties who are not creditors; (3) to provide that a creditor who is an infant, an incompetent person, or a governmental unit is entitled to receive notices if the time for that creditor to file a claim has been extended under Rule 3002(c)(1) or (c)(2); and (4) to delete cross-references to Rule 2002(a)(4) and Rule 3002(c)(6), which are being abrogated.

(e) Rule 2015(b) and (c) are amended to clarify that a debtor in possession or trustee in a chapter 12 case, or a debtor engaged in business in a chapter 13 case, does not have to file an inventory of the debtor's property unless the court so directs.

(f) Rule 3002 is amended to conform to the new section 502(b)(9) that was added to the Code by the Bankruptcy Reform Act of 1994 and which governs objections to tardily filed claims. Rule 3002(c)(1) is amended to conform to the new section 502(b)(9) to the extent that it provides that a proof of claim filed by a governmental unit is timely if it is filed not later than 180 days after the order for relief. Rule 3002(c)(1) is also amended to delete any distinction between domestic and foreign governmental units. Rule 3002(c)(6) is abrogated to make the rule consistent with section 726 of the Bankruptcy Code which provides that, under certain circumstances, a creditor holding a claim that has been tardily filed may be entitled to receive a distribution in a chapter 7 case.

(g) Rule 3016(a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a chapter 11 plan without the court, after notice and a hearing, finding cause for an extension as is required by section 1121(d) of the

Bankruptcy Code.

(h) Rule 4004(c) is amended to delay the debtor's discharge in a chapter 7 case if there is a pending motion to extend the time for filing a complaint objecting to discharge or if the filing fee has not been paid in full.

(i) Rule 5005(a) is amended to authorize local rules that permit documents to be filed, signed, or verified by electronic means, provided that such means are consistent with technical standards, if any, established by the Judicial Conference. The rule also provides that a document filed by electronic means constitutes a "written paper" for the purpose of applying the rules and constitutes a public record open to examination. The purpose of these amendments is to facilitate the filing, signing, or verification of documents by computer-to-computer transmission without the need to reduce them to paper form in the clerk's office.

(k) Rule 7004 is amended to conform to the 1993 amendments to Rule 4 of the Federal Rules of Civil Procedure. First, cross-references to subdivisions of F.R.Civ.P. 4 are changed to conform to the new structure of the Civil Rule. Second, substantive changes to Rule 4 F.R.Civ.P. that became effective in 1993 are implemented in Rule 7004 to the extent that they are consistent with the continuing availability under Rule 7004 of service by first class mail as an alternative to the methods of personal service provided under Rule 4 F.R.Civ.P.

(l) Rule 8008 is amended to permit district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules to allow filing, signing, or verification of documents by electronic means in the same manner and with the same limitations that are applicable to bankruptcy courts under Rule 5005(a), as amended.

(m) Rule 9006 is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8).

2. Text of Proposed Amendments, GAP Report, and Summary of Comments Relating to Particular Rules:

PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1006. Filing Fee

1 (a) GENERAL REQUIREMENT. Every
2 petition shall be accompanied by the
3 ~~prescribed~~ filing fee except as provided
4 in subdivision (b) of this rule. For
5 the purpose of this rule, "filing fee"
6 means the filing fee prescribed by 28
7 U.S.C. § 1930(a)(1)-(a)(5) and any other
8 fee prescribed by the Judicial
9 Conference of the United States under 28
10 U.S.C. § 1930(b) that is payable to the
11 clerk upon the commencement of a case
12 under the Code.

* * * * *

COMMITTEE NOTE

The Judicial Conference prescribes miscellaneous fees pursuant to 28 U.S.C.

*New matter is underlined; matter to be omitted is lined through.

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§ 1930(b). In 1992, a \$30 miscellaneous administrative fee was prescribed for all chapter 7 and chapter 13 cases. The Judicial Conference fee schedule was amended in 1993 to provide that an individual debtor may pay this fee in installments.

Subdivision (a) of this rule is amended to clarify that every petition must be accompanied by any fee prescribed under 28 U.S.C. § 1930(b) that is required to be paid when a petition is filed, as well as the filing fee prescribed by 28 U.S.C. § 1930(a). By defining "filing fee" to include Judicial Conference fees, the procedures set forth in subdivision (b) for paying the filing fee in installments will also apply with respect to any Judicial Conference fee required to be paid at the commencement of the case.

GAP Report on Rule 1006. No changes since publication, except for a stylistic change in subdivision (a).

Rule 1007. Lists, Schedules and Statements; Time Limits

* * * * *

1 (c) TIME LIMITS. The schedules and
 2 statements, other than the statement of
 3 intention, shall be filed with the

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4 petition in a voluntary case, or if the
5 petition is accompanied by a list of all
6 the debtor's creditors and their
7 addresses, within 15 days thereafter,
8 except as otherwise provided in
9 subdivisions (d), (e), and (h) of this
10 rule. In an involuntary case the
11 schedules and statements, other than the
12 statement of intention, shall be filed
13 by the debtor within 15 days after entry
14 of the order for relief. Schedules and
15 statements previously filed prior to the
16 conversion of a case to another chapter
17 in a pending chapter 7 case shall be
18 deemed filed in a superseding the
19 converted case unless the court directs
20 otherwise. Any extension of time for
21 the filing of the schedules and
22 statements may be granted only on motion
23 for cause shown and on notice to the

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24 United States trustee and to any
25 committee elected ~~pursuant to~~ under
26 § 705 or appointed ~~pursuant to~~ under
27 § 1102 of the Code, trustee, examiner,
28 or other party as the court may direct.
29 Notice of an extension shall be given to
30 the United States trustee and to any
31 committee, trustee, or other party as
32 the court may direct.

* * * * *

COMMITTEE NOTE

Subdivision (c) is amended to provide that schedules and statements filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case, whether or not the case was a chapter 7 case prior to conversion. This amendment is in recognition of the 1991 amendments to the Official Forms that abrogated the Chapter 13 Statement and made the same forms for schedules and statements applicable in all cases.

This subdivision also contains a technical correction. The phrase "superseded case" creates the erroneous

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impression that conversion of a case results in a new case that is distinct from the original case. The effect of conversion of a case is governed by § 348 of the Code.

GAP Report on Rule 1007(c). No changes since publication, except for stylistic changes.

**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**

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

4 * * * * *

5 ~~(7) EXTENSION OF TIME TO FILE~~
6 ~~CLAIMS AGAINST SURPLUS. Any extension~~
7 ~~of time for the filing of claims against~~
8 ~~a surplus granted pursuant to Rule~~
9 ~~3002(e)(6), shall apply to holders of~~
10 ~~claims who failed to file their claims~~

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11 ~~within the time prescribed, or fixed by~~
 12 ~~the court pursuant to paragraph (6) of~~
 13 ~~this rule, and notice shall be given as~~
 14 ~~provided in Rule 2002.~~

COMMITTEE NOTE

Subdivision (7) is abrogated to conform to the abrogation of Rule 3002(c)(6).

GAP Report on Rule 1019. No changes were made to the text of the rule. The Committee Note was changed to conform to the proposed changes to Rule 3002 (see GAP Report on Rule 3002 below).

**Rule 2002. Notices to Creditors,
 Equity Security
 Holders, United States, and
 United States Trustee**

1 (a) TWENTY-DAY NOTICES TO PARTIES
 2 IN INTEREST. Except as provided in
 3 subdivisions (h), (i), and (l) of this
 4 rule, the clerk, or some other person as
 5 the court may direct, shall give the

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6 debtor, the trustee, all creditors and
7 indenture trustees ~~not less than 20 days~~
8 at least 20 days' notice by mail of:

- 9 (1) the meeting of creditors
10 ~~pursuant to~~ under § 341
11 of the Code;
- 12 (2) a proposed use, sale, or
13 lease of property of the
14 estate other than in the
15 ordinary course of
16 business, unless the
17 court for cause shown
18 shortens the time or
19 directs another method
20 of giving notice;
- 21 (3) the hearing on approval
22 of a compromise or
23 settlement of a
24 controversy other than
25 approval of an agreement

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26 pursuant to Rule
27 4001(d), unless the
28 court for cause shown
29 directs that notice not
30 be sent;

31 ~~(4) the date fixed for the~~
32 ~~filing of claims against~~
33 ~~a surplus in an estate~~
34 ~~as provided in Rule~~
35 ~~3002(e)(6),~~

36 ~~(5)~~ (4) in a chapter 7
37 liquidation, a chapter
38 11 reorganization case,
39 and a chapter 12 family
40 farmer debt adjustment
41 case, the hearing on the
42 dismissal of the case,
43 unless the hearing is
44 ~~pursuant to~~ under
45 § 707(b) of the Code, or

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46 the conversion of the
47 case to another chapter;
48 ~~(6)~~ (5) the time fixed to
49 accept or reject a
50 proposed modification of
51 a plan;
52 ~~(7)~~ (6) hearings on all
53 applications for
54 compensation or
55 reimbursement of
56 expenses ~~totalling~~
57 totaling in excess of
58 \$500;
59 ~~(8)~~ (7) the time fixed for
60 filing proofs of claims
61 pursuant to Rule
62 3003(c); and
63 ~~(9)~~ (8) the time fixed for
64 filing objections and
65 the hearing to consider

10 RULES OF BANKRUPTCY PROCEDURE

66 confirmation of a
67 chapter 12 plan.

68 * * * * *

69 (c) CONTENT OF NOTICE.

70 * * * * *

71 (2) *Notice of Hearing on*
72 *Compensation.* The notice of a
73 hearing on an application for
74 compensation or reimbursement of
75 expenses required by subdivision
76 ~~(a)(7)~~ (a)(6) of this rule shall
77 identify the applicant and the
78 amounts requested.

79 * * * * *

80 (f) OTHER NOTICES. Except as
81 provided in subdivision (1) of this
82 rule, the clerk, or some other person as
83 the court may direct, shall give the
84 debtor, all creditors, and indenture
85 trustees notice by mail of: (1) the

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86 order for relief;

87 * * * * *

88 and (8) a summary of the trustee's final
89 report ~~and account~~ in a chapter 7 case
90 if the net proceeds realized exceed
91 \$1,500. Notice of the time fixed for
92 accepting or rejecting a plan pursuant
93 to Rule 3017(c) shall be given in
94 accordance with Rule 3017(d).

95 * * * * *

96 (h) NOTICES TO CREDITORS WHOSE
97 CLAIMS ARE FILED. In a chapter 7 case,
98 ~~the court may,~~ after 90 days following
99 the first date set for the meeting of
100 creditors ~~pursuant to~~ under § 341 of the
101 Code, the court may direct that all
102 notices required by subdivision (a) of
103 this rule, ~~except clause (4) thereof,~~ be
104 mailed only to the debtor, the trustee,
105 all indenture trustees, creditors whose

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106 ~~claims~~ that hold claims for which proofs
107 of claim have been filed, and creditors,
108 if any, ~~who~~ that are still permitted to
109 file claims by reason of an extension
110 granted ~~under Rule 3002(e)(6)~~ pursuant
111 to Rule 3002(c)(1) or (c)(2). In a case
112 where notice of insufficient assets to
113 pay a dividend has been given to
114 creditors pursuant to subdivision (e) of
115 this rule, after 90 days following the
116 mailing of a notice of the time for
117 filing claims pursuant to Rule
118 3002(c)(5), the court may direct that
119 notices be mailed only to the entities
120 specified in the preceding sentence.

121 (i) NOTICES TO COMMITTEES. Copies
122 of all notices required to be mailed
123 ~~under~~ pursuant to this rule shall be
124 mailed to the committees elected
125 ~~pursuant to~~ under § 705 or appointed

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126 ~~pursuant to~~ under § 1102 of the Code or
127 to their authorized agents.
128 Notwithstanding the foregoing
129 subdivisions, the court may order that
130 notices required by subdivision (a) (2),
131 (3) and ~~(7)~~ (6) of this rule be
132 transmitted to the United States trustee
133 and be mailed only to the committees
134 elected ~~pursuant to~~ under § 705 or
135 appointed ~~pursuant to~~ under § 1102 of
136 the Code or to their authorized agents
137 and to the creditors and equity security
138 holders who serve on the trustee or
139 debtor in possession and file a request
140 that all notices be mailed to them. A
141 committee appointed ~~pursuant to~~ under
142 § 1114 shall receive copies of all
143 notices required by subdivisions (a) (1),
144 ~~(a) (6)~~ (a) (5), (b), (f) (2), and (f) (7),
145 and such other notices as the court may

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146 direct.

147 * * * * *

148 (k) NOTICES TO UNITED STATES
149 TRUSTEE. Unless the case is a chapter 9
150 municipality case or unless the United
151 States trustee ~~otherwise~~ requests
152 otherwise, the clerk, or some other
153 person as the court may direct, shall
154 transmit to the United States trustee
155 notice of the matters described in
156 subdivisions (a)(2), (a)(3), ~~(a)(5)~~
157 (a)(4), ~~(a)(9)~~ (a)(8), (b), (f)(1),
158 (f)(2), (f)(4), (f)(6), (f)(7), and
159 (f)(8) of this rule and notice of
160 hearings on all applications for
161 compensation or reimbursement of
162 expenses. Notices to the United States
163 trustee shall be transmitted within the
164 time prescribed in subdivision (a) or
165 (b) of this rule. The United States

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166 trustee shall also receive notice of any
167 other matter if such notice is requested
168 by the United States trustee or ordered
169 by the court. Nothing in these rules
170 ~~shall require~~ requires the clerk or any
171 other person to transmit to the United
172 States trustee any notice, schedule,
173 report, application or other document in
174 a case under the Securities Investor
175 Protection Act, 15 U.S.C. § 78aaa et
176 seq.

* * * * *

COMMITTEE NOTE

Paragraph (a)(4) is abrogated to conform to the abrogation of Rule 3002(c)(6). The remaining paragraphs of subdivision (a) are renumbered, and references to these paragraphs contained in other subdivisions of this rule are amended accordingly.

Paragraph (f)(8) is amended so that a summary of the trustee's final account, which is prepared after distribution of property, does not have

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to be mailed to the debtor, all creditors, and indenture trustees in a chapter 7 case. Parties are sufficiently protected by receiving a summary of the trustee's final report that informs parties of the proposed distribution of property.

Subdivision (h) is amended (1) to provide that an order under this subdivision may not be issued if a notice of no dividend is given pursuant to Rule 2002(e) and the time for filing claims has not expired as provided in Rule 3002(c)(5); (2) to clarify that notices required to be mailed by subdivision (a) to parties other than creditors must be mailed to those entities despite an order issued pursuant to subdivision (h); (3) to provide that if the court, pursuant to Rule 3002(c)(1) or 3002(c)(2), has granted an extension of time to file a proof of claim, the creditor for whom the extension has been granted must continue to receive notices despite an order issued pursuant to subdivision (h); and (4) to delete references to subdivision (a)(4) and Rule 3002(c)(6), which have been abrogated.

Other amendments to this rule are stylistic.

GAP Report on Rule 2002. No changes since publication, except for stylistic changes and the correction of a typographical error in the committee note.

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Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case

* * * * *

1 (b) CHAPTER 12 TRUSTEE AND DEBTOR
2 IN POSSESSION. In a chapter 12 family
3 farmer's debt adjustment case, the
4 debtor in possession shall perform the
5 duties prescribed in clauses ~~(1)-(4)~~
6 (2)-(4) of subdivision (a) of this rule
7 and, if the court directs, shall file
8 and transmit to the United States
9 trustee a complete inventory of the
10 property of the debtor within the time
11 fixed by the court. If the debtor is
12 removed as debtor in possession, the
13 trustee shall perform the duties of the
14 debtor in possession prescribed in this
15 paragraph.

16 (c) CHAPTER 13 TRUSTEE AND DEBTOR.

17 (1) *Business Cases.* In a
18 chapter 13 individual's debt

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19 adjustment case, when the debtor is
20 engaged in business, the debtor
21 shall perform the duties prescribed
22 by clauses ~~(1)-(4)~~ (2)-(4) of
23 subdivision (a) of this rule and,
24 if the court directs, shall file
25 and transmit to the United States
26 trustee a complete inventory of the
27 property of the debtor within the
28 time fixed by the court.

* * * * *

COMMITTEE NOTE

Subdivision (a)(1) provides that the trustee in a chapter 7 case and, if the court directs, the trustee or debtor in possession in a chapter 11 case, is required to file and transmit to the United States trustee a complete inventory of the debtor's property within 30 days after qualifying as trustee or debtor in possession, unless such an inventory has already been filed. Subdivisions (b) and (c) are amended to clarify that a debtor in possession and trustee in a chapter 12 case, and a debtor in a chapter 13 case

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where the debtor is engaged in business, are not required to file and transmit to the United States trustee a complete inventory of the property of the debtor unless the court so directs. If the court so directs, the court also fixes the time limit for filing and transmitting the inventory.

GAP Report on Rule 2015. No changes since publication, except for a stylistic change in the first sentence of the committee note.

**Rule 3002. Filing Proof of Claim
or Interest**

1 (a) NECESSITY FOR FILING. An
2 unsecured creditor or an equity security
3 holder must file a proof of claim or
4 interest ~~in accordance with this rule~~
5 for the claim or interest to be allowed,
6 except as provided in Rules 1019(3),
7 3003, 3004, and 3005.

8 * * * * *

9 (c) TIME FOR FILING. In a chapter
10 7 liquidation, chapter 12 family

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11 farmer's debt adjustment, or chapter 13
12 individual's debt adjustment case, a
13 proof of claim ~~shall be filed within is~~
14 timely filed if it is filed not later
15 than 90 days after the first date set
16 for the meeting of creditors called
17 under ~~pursuant to~~ § 341(a) of the Code,
18 except as follows:

19 (1) A proof of claim filed by
20 a governmental unit is timely filed
21 if it is filed not later than 180
22 days after the date of the order
23 for relief. On motion of the
24 ~~United States, a state, or~~
25 ~~subdivision thereof~~ a governmental
26 unit before the expiration of such
27 period and for cause shown, the
28 court may extend the time for
29 filing of a claim by the ~~United~~
30 ~~States, state or subdivision~~

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The phrase "in accordance with this rule" is deleted from Rule 3002(a) to clarify that the effect of filing a proof of claim after the expiration of the time prescribed in Rule 3002(c) is governed by § 502(b)(9) of the Code, rather than by this rule.

Section 502(b)(9) of the Code provides that a claim of a governmental unit shall be timely filed if it is filed "before 180 days after the date of the order for relief" or such later time as the Bankruptcy Rules provide. To avoid any confusion as to whether a governmental unit's proof of claim is timely filed under § 502(b)(9) if it is filed on the 180th day after the order for relief, paragraph (1) of subdivision (c) provides that a governmental unit's claim is timely if it is filed not later than 180 days after the order for relief.

References to "the United States, a state, or subdivision thereof" in paragraph (1) of subdivision (c) are changed to "governmental unit" to avoid different treatment among foreign and domestic governments.

GAP Report on Rule 3002. After publication of the proposed amendments, the Bankruptcy Reform Act of 1994 amended sections 726 and 502(b) of the Code to clarify the rights of creditors who tardily file a proof of claim. In view of the Reform Act, proposed new subdivision (d) of Rule 3002 has been

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deleted from the proposed amendments because it is no longer necessary. In addition, subdivisions (a) and (c) have been changed after publication to clarify that the effect of tardily filing a proof of claim is governed by § 502 (b) (9) of the Code, rather than by this rule.

The amendments to § 502(b) also provide that a governmental unit's proof of claim is timely filed if it is filed before 180 days after the order for relief. Proposed amendments to Rule 3002(c)(1) were added to the published amendments to conform to this statutory change and to avoid any confusion as to whether a claim by a governmental unit is timely if it is filed on the 180th day.

The committee note has been re-written to explain the rule changes designed to conform to the Reform Act.

**Rule 3016. Filing of Plan and
Disclosure Statement in Chapter 9
Municipality and Chapter 11
Reorganization Cases**

- 1 ~~(a) TIME FOR FILING PLAN. A party in~~
- 2 ~~interest, other than the debtor, who is~~
- 3 ~~authorized to file a plan under~~
- 4 ~~§ 1121(e) of the Code may not file a~~

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5 ~~plan after entry of an order approving a~~
6 ~~disclosure statement unless confirmation~~
7 ~~of the plan relating to the disclosure~~
8 ~~statement has been denied or the court~~
9 ~~otherwise directs.~~

10 ~~(b)~~ (a) IDENTIFICATION OF PLAN.

11 Every proposed plan and any modification
12 thereof shall be dated and, in a chapter
13 11 case, identified with the name of the
14 entity or entities submitting or filing
15 it.

16 ~~(e)~~ (b) DISCLOSURE STATEMENT. In a
17 chapter 9 or 11 case, a disclosure
18 statement ~~pursuant to~~ under § 1125 or
19 evidence showing compliance with
20 § 1126(b) of the Code shall be filed
21 with the plan or within a time fixed by
22 the court.

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COMMITTEE NOTE

Section 1121(c) gives a party in interest the right to file a chapter 11 plan after expiration of the period when only the debtor may file a plan. Under § 1121(d), the exclusive period in which only the debtor may file a plan may be extended, but only if a party in interest so requests and the court, after notice and a hearing, finds cause for an extension. Subdivision (a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a plan without satisfying the requirements of § 1121(d). The abrogation of subdivision (a) does not affect the court's discretion with respect to the scheduling of hearings on the approval of disclosure statements when more than one plan has been filed.

The amendment to subdivision (c), redesignated as subdivision (b), is stylistic.

GAP Report on Rule 3016. No changes since publication, except for a stylistic change.

Rule 4004. Grant or Denial of Discharge

* * * * *

1 (c) GRANT OF DISCHARGE.

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22 time for filing a
23 complaint objecting to
24 discharge is pending, or
25 (f) the debtor has not paid
26 in full the filing fee
27 prescribed by 28 U.S.C.
28 § 1930(a) and any other
29 fee prescribed by the
30 Judicial Conference of
31 the United States under
32 28 U.S.C. § 1930(b) that
33 is payable to the clerk
34 upon the commencement of
35 a case under the Code.

36 (2) Notwithstanding ~~the~~
37 ~~foregoing~~ Rule 4004(c)(1), on
38 motion of the debtor, the court may
39 defer the entry of an order
40 granting a discharge for 30 days
41 and, on motion within ~~such~~ that

28 RULES OF BANKRUPTCY PROCEDURE

42 period, the court may defer entry
43 of the order to a date certain.

* * * * *

COMMITTEE NOTE

Subsection (c) is amended to delay entry of the order of discharge if a motion pursuant to Rule 4004(b) to extend the time for filing a complaint objecting to discharge is pending. Also, this subdivision is amended to delay entry of the discharge order if the debtor has not paid in full the filing fee and the administrative fee required to be paid upon the commencement of the case. If the debtor is authorized to pay the fees in installments in accordance with Rule 1006, the discharge order will not be entered until the final installment has been paid.

The other amendments to this rule are stylistic.

GAP Report on Rule 4004. No changes have been made since publication, except for stylistic changes.

**Rule 5005. Filing and Transmittal of
Papers**

1 (a) FILING.

2 (1) Place of Filing. The lists,
3 schedules, statements, proofs of claim
4 or interest, complaints, motions,
5 applications, objections and other
6 papers required to be filed by these
7 rules, except as provided in 28 U.S.C.
8 § 1409, shall be filed with the clerk in
9 the district where the case under the
10 Code is pending. The judge of that
11 court may permit the papers to be filed
12 with the judge, in which event the
13 filing date shall be noted thereon, and
14 they shall be forthwith transmitted to
15 the clerk. The clerk shall not refuse
16 to accept for filing any petition or
17 other paper presented for the purpose of
18 filing solely because it is not
19 presented in proper form as required by

30 RULES OF BANKRUPTCY PROCEDURE

20 these rules or any local rules or
21 practices.

22 (2) Filing by Electronic Means. A
23 court may by local rule permit documents
24 to be filed, signed, or verified by
25 electronic means that are consistent
26 with technical standards, if any, that
27 the Judicial Conference of the United
28 States establishes. A document filed by
29 electronic means in compliance with a
30 local rule constitutes a written paper
31 for the purpose of applying these rules,
32 the Federal Rules of Civil Procedure
33 made applicable by these rules, and
34 § 107 of the Code.

* * * * *

COMMITTEE NOTE

The rule is amended to permit, but not require, courts to adopt local rules that allow filing, signing, or verifying of documents by electronic means.

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However, such local rules must be consistent with technical standards, if any, promulgated by the Judicial Conference of the United States.

An important benefit to be derived by permitting filing by electronic means is that the extensive volume of paper received and maintained as records in the clerk's office will be reduced substantially. With the receipt of electronic data transmissions by computer, the clerk may maintain records electronically without the need to reproduce them in tangible paper form.

Judicial Conference standards governing the technological aspects of electronic filing will result in uniformity among judicial districts to accommodate an increasingly national bar. By delegating to the Judicial Conference the establishment and future amendment of national standards for electronic filing, the Supreme Court and Congress will be relieved of the burden of reviewing and promulgating detailed rules dealing with complex technological standards. Another reason for leaving to the Judicial Conference the formulation of technological standards for electronic filing is that advances in computer technology occur often, and changes in the technological standards may have to be implemented more frequently than would be feasible by rule amendment under the Rules Enabling Act process.

It is anticipated that standards

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established by the Judicial Conference will govern technical specifications for electronic data transmission, such as requirements relating to the formatting of data, speed of transmission, means to transmit copies of supporting documentation, and security of communication procedures. In addition, before procedures for electronic filing are implemented, standards must be established to assure the proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. These matters will be governed by local rules until system-wide standards are adopted by the Judicial Conference.

Rule 9009 requires that the Official Forms shall be observed and used "with alterations as may be appropriate." Compliance with local rules and any Judicial Conference standards with respect to the formatting or presentation of electronically transmitted data, to the extent that they do not conform to the Official Forms, would be an appropriate alteration within the meaning of Rule 9009.

These rules require that certain documents be in writing. For example, Rule 3001 states that a proof of claim is a "written statement." Similarly, Rule 3007 provides that an objection to a claim "shall be in writing." Pursuant to the new subdivision (a)(2), any requirement under these rules that a paper be written may be satisfied by

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filing the document by electronic means, notwithstanding the fact that the clerk neither receives nor prints a paper reproduction of the electronic data.

Section 107(a) of the Code provides that a "paper" filed in a case is a public record open to examination by an entity at reasonable times without charge, except as provided in § 107(b). The amendment to subdivision (a)(2) provides that an electronically filed document is to be treated as such a public record.

Although under subdivision (a)(2) electronically filed documents may be treated as written papers or as signed or verified writings, it is important to emphasize that such treatment is only for the purpose of applying these rules. In addition, local rules and Judicial Conference standards regarding verification must satisfy the requirements of 28 U.S.C. § 1746.

GAP Report on Rule 5005. No changes since publication.

**Rule 7004. Process; Service of
Summons, Complaint**

- 1 (a) SUMMONS; SERVICE; PROOF OF
2 SERVICE. Rule ~~4(a), (b), (c)(2)(C)(i),~~
3 ~~(d), (e) and (g)(j)~~ 4(a), (b), (c)(1).

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4 (d) (1), (e) - (j), (l), and (m)
5 F.R.Civ.P. applies in adversary
6 proceedings. Personal service pursuant
7 to Rule ~~4(d)~~ 4(e) - (j) F.R.Civ.P. may be
8 made by any person ~~not less than~~ at
9 least 18 years of age who is not a
10 party, and the summons may be delivered
11 by the clerk to any such person.

12 (b) SERVICE BY FIRST CLASS MAIL.
13 Except as provided in subdivision (h),
14 in addition to the methods of service
15 authorized by Rule ~~4(e)(2)(C)(i) and (d)~~
16 4(e) - (j) F.R.Civ.P., service may be
17 made within the United States by first
18 class mail postage prepaid as follows:

19 (1) Upon an individual other
20 than an infant or incompetent, by
21 mailing a copy of the summons and
22 complaint to the individual's
23 dwelling house or usual place of

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24 abode or to the place where the
25 individual regularly conducts a
26 business or profession.

27 (2) Upon an infant or an
28 incompetent person, by mailing a
29 copy of the summons and complaint
30 to the person upon whom process is
31 prescribed to be served by the law
32 of the state in which service is
33 made when an action is brought
34 against such a defendant in the
35 courts of general jurisdiction of
36 that state. The summons and
37 complaint in that ~~such~~ case shall
38 be addressed to the person required
39 to be served at that person's
40 dwelling house or usual place of
41 abode or at the place where the
42 person regularly conducts a
43 business or profession.

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44 (3) Upon a domestic or foreign
45 corporation or upon a partnership
46 or other unincorporated
47 association, by mailing a copy of
48 the summons and complaint to the
49 attention of an officer, a managing
50 or general agent, or to any other
51 agent authorized by appointment or
52 by law to receive service of
53 process and, if the agent is one
54 authorized by statute to receive
55 service and the statute so
56 requires, by also mailing a copy to
57 the defendant.

58 (4) Upon the United States, by
59 mailing a copy of the summons and
60 complaint addressed to the civil
61 process clerk at the office of the
62 United States attorney for the
63 district in which the action is

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64 brought and by mailing a copy of
65 the summons and complaint to also
66 the Attorney General of the United
67 States at Washington, District of
68 Columbia, and in any action
69 attacking the validity of an order
70 of an officer or an agency of the
71 United States not made a party, by
72 also mailing a copy of the summons
73 and complaint to that such officer
74 or agency. The court shall allow a
75 reasonable time for service
76 pursuant to this subdivision for
77 the purpose of curing the failure
78 to mail a copy of the summons and
79 complaint to multiple officers,
80 agencies, or corporations of the
81 United States if the plaintiff has
82 mailed a copy of the summons and
83 complaint either to the civil

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84 process clerk at the office of the
85 United States attorney or to the
86 Attorney General of the United
87 States.

88 (5) Upon any officer or agency
89 of the United States, by mailing a
90 copy of the summons and complaint
91 to the United States as prescribed
92 in paragraph (4) of this
93 subdivision and also to the officer
94 or agency. If the agency is a
95 corporation, the mailing shall be
96 as prescribed in paragraph (3) of
97 this subdivision of this rule. The
98 court shall allow a reasonable time
99 for service pursuant to this
100 subdivision for the purpose of
101 curing the failure to mail a copy
102 of the summons and complaint to
103 multiple officers, agencies, or

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104 corporations of the United States
105 if the plaintiff has mailed a copy
106 of the summons and complaint either
107 to the civil process clerk at the
108 office of the United States
109 attorney or to the Attorney General
110 of the United States. If the United
111 States trustee is the trustee in
112 the case and service is made upon
113 the United States trustee solely as
114 trustee, service may be made as
115 prescribed in paragraph (10) of
116 this subdivision of this rule.

117 (6) Upon a state or municipal
118 corporation or other governmental
119 organization thereof subject to
120 suit, by mailing a copy of the
121 summons and complaint to the person
122 or office upon whom process is
123 prescribed to be served by the law

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124 of the state in which service is
125 made when an action is brought
126 against such a defendant in the
127 courts of general jurisdiction of
128 that state, or in the absence of
129 the designation of any such person
130 or office by state law, then to the
131 chief executive officer thereof.

132 (7) Upon a defendant of any
133 class referred to in paragraph (1)
134 or (3) of this subdivision of this
135 rule, it is also sufficient if a
136 copy of the summons and complaint
137 is mailed to the entity upon whom
138 service is prescribed to be served
139 by any statute of the United States
140 or by the law of the state in which
141 service is made when an action is
142 brought against such a defendant in
143 the court of general jurisdiction

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144 of that state.

145 (8) Upon any defendant, it is
146 also sufficient if a copy of the
147 summons and complaint is mailed to
148 an agent of such defendant
149 authorized by appointment or by law
150 to receive service of process, at
151 the agent's dwelling house or usual
152 place of abode or at the place
153 where the agent regularly carries
154 on a business or profession and, if
155 the authorization so requires, by
156 mailing also a copy of the summons
157 and complaint to the defendant as
158 provided in this subdivision.

159 (9) Upon the debtor, after a
160 petition has been filed by or
161 served upon the debtor and until
162 the case is dismissed or closed, by
163 mailing ~~copies~~ a copy of the

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164 summons and complaint to the debtor
165 at the address shown in the
166 petition or statement of affairs or
167 to such other address as the debtor
168 may designate in a filed writing
169 and, if the debtor is represented
170 by an attorney, to the attorney at
171 the attorney's post-office address.

172 (10) Upon the United States
173 trustee, when the United States
174 trustee is the trustee in the case
175 and service is made upon the United
176 States trustee solely as trustee,
177 by mailing a copy of the summons
178 and complaint to an office of the
179 United States trustee or another
180 place designated by the United
181 States trustee in the district
182 where the case under the Code is
183 pending.

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184 (c) SERVICE BY PUBLICATION. If a
185 party to an adversary proceeding to
186 determine or protect rights in property
187 in the custody of the court cannot be
188 served as provided in Rule ~~4(d) or (i)~~
189 4(e) - (j) F.R.Civ.P. or subdivision (b)
190 of this rule, the court may order the
191 summons and complaint to be served by
192 mailing copies thereof by first class
193 mail, postage prepaid, to the party's
194 last known address, and by at least one
195 publication in such manner and form as
196 the court may direct.

197 (d) NATIONWIDE SERVICE OF PROCESS.
198 The summons and complaint and all other
199 process except a subpoena may be served
200 anywhere in the United States.

201 ~~(e) SERVICE ON DEBTOR AND OTHERS IN~~
202 ~~FOREIGN COUNTRY. The summons and~~
203 ~~complaint and all other process except a~~

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204 ~~subpoena may be served as provided in~~
205 ~~Rule 4(d)(1) and (d)(3) F.R.Civ.P. in a~~
206 ~~foreign country (A) on the debtor, any~~
207 ~~person required to perform the duties of~~
208 ~~a debtor, any general partner of a~~
209 ~~partnership debtor, or any attorney who~~
210 ~~is a party to a transaction subject to~~
211 ~~examination under Rule 2017, or (B) on~~
212 ~~any party to an adversary proceeding to~~
213 ~~determine or protect rights in property~~
214 ~~in the custody of the court, or (C) on~~
215 ~~any person whenever such service is~~
216 ~~authorized by a federal or state law~~
217 ~~referred to in Rule 4(e)(2)(C)(i) or (e)~~
218 ~~F.R.Civ.P.~~

219 ~~(f)~~ (e) SUMMONS: TIME LIMIT FOR
220 SERVICE. If service is made pursuant to
221 Rule ~~4(d)(1) (6)~~ 4(e)-(j) F.R.Civ.P. it
222 shall be made by delivery of the summons
223 and complaint within 10 days following

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224 issuance of the summons. If service is
225 made by any authorized form of mail, the
226 summons and complaint shall be deposited
227 in the mail within 10 days following
228 issuance of the summons. If a summons
229 is not timely delivered or mailed,
230 another summons shall be issued and
231 served.

232 (f) PERSONAL JURISDICTION. If the
233 exercise of jurisdiction is consistent
234 with the Constitution and laws of the
235 United States, serving a summons or
236 filing a waiver of service in accordance
237 with this rule or the subdivisions of
238 Rule 4 F.R.Civ.P. made applicable by
239 these rules is effective to establish
240 personal jurisdiction over the person of
241 any defendant with respect to a case
242 under the Code or a civil proceeding
243 arising under the Code, or arising in or

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244 related to a case under the Code.

245 (g) ~~EFFECT OF AMENDMENT TO RULE 4~~
246 ~~F.R.CIV.P. The subdivisions of Rule 4~~
247 ~~F.R.Civ.P. made applicable by these~~
248 ~~rules shall be the subdivisions of Rule~~
249 ~~4 F.R.Civ.P. in effect on January 1,~~
250 ~~1990, notwithstanding any amendment to~~
251 ~~Rule 4 F.R.Civ.P. subsequent thereto.~~
252 [Abrogated]

253 (h) SERVICE OF PROCESS ON AN
254 INSURED DEPOSITORY INSTITUTION. --
255 Service on an insured depository
256 institution (as defined in section 3 of
257 the Federal Deposit Insurance Act) in a
258 contested matter or adversary proceeding
259 shall be made by certified mail
260 addressed to an officer of the
261 institution unless --

262 (1) the institution has
263 appeared by its attorney, in which

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264 case the attorney shall be served
265 by first class mail;

266 (2) the court orders otherwise
267 after service upon the institution
268 by certified mail of notice of an
269 application to permit service on
270 the institution by first class mail
271 sent to an officer of the
272 institution designated by the
273 institution; or

274 (3) the institution has waived
275 in writing its entitlement to
276 service by certified mail by
277 designating an officer to receive
278 service.

COMMITTEE NOTE

The purpose of these amendments is to conform the rule to the 1993 revisions of Rule 4 F.R.Civ.P. and to make stylistic improvements. Rule 7004, as amended, continues to provide for service by first class mail as an

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alternative to the methods of personal service provided in Rule 4 F.R.Civ.P., except as provided in the new subdivision (h).

Rule 4(d)(2) F.R.Civ.P. provides a procedure by which the plaintiff may request by first class mail that the defendant waive service of the summons. This procedure is not applicable in adversary proceedings because it is not necessary in view of the availability of service by mail pursuant to Rule 7004(b). However, if a written waiver of service of a summons is made in an adversary proceeding, Rule 4(d)(1) F.R.Civ.P. applies so that the defendant does not thereby waive any objection to the venue or the jurisdiction of the court over the person of the defendant.

Subdivisions (b)(4) and (b)(5) are amended to conform to the 1993 amendments to Rule 4(i)(3) F.R.Civ.P., which protect the plaintiff from the hazard of losing a substantive right because of failure to comply with the requirements of multiple service when the United States or an officer, agency, or corporation of the United States is a defendant. These subdivisions also are amended to require that the summons and complaint be addressed to the civil process clerk at the office of the United States attorney.

Subdivision (e), which has governed service in a foreign country, is abrogated and Rule 4(f) and (h)(2) F.R.Civ.P., as substantially revised in

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1993, are made applicable in adversary proceedings.

The new subdivision (f) is consistent with the 1993 amendments to F.R.Civ.P. 4(k)(2). It clarifies that service or filing a waiver of service in accordance with this rule or the applicable subdivisions of F.R.Civ.P. 4 is sufficient to establish personal jurisdiction over the defendant. See the committee note to the 1993 amendments to Rule 4 F.R.Civ.P.

Subdivision (g) is abrogated. This subdivision was promulgated in 1991 so that anticipated revisions to Rule 4 F.R.Civ.P. would not affect service of process in adversary proceedings until further amendment to Rule 7004.

Subdivision (h) and the first phrase of subdivision (b) were added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106.

GAP Report on Rule 7004. After publication of the proposed amendments, Rule 7004(b) was amended and Rule 7004 (h) was added by the Bankruptcy Reform Act of 1994 to provide for service by certified mail on an insured depository institution. The above draft includes those statutory amendments (without underlining new language or striking former language). No other changes have been made since publication, except for stylistic changes.

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Rule 8008. Filing and Service

1 (a) FILING. Papers required or
2 permitted to be filed with the clerk of
3 the district court or the clerk of the
4 bankruptcy appellate panel may be filed
5 by mail addressed to the clerk, but
6 filing ~~shall not be~~ is not timely unless
7 the papers are received by the clerk
8 within the time fixed for filing, except
9 that briefs ~~shall be~~ are deemed filed on
10 the day of mailing. An original and one
11 copy of all papers shall be filed when
12 an appeal is to the district court; an
13 original and three copies shall be filed
14 when an appeal is to a bankruptcy
15 appellate panel. The district court or
16 bankruptcy appellate panel may require
17 that additional copies be furnished.
18 Rule 5005(a)(2) applies to papers filed

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19 with the clerk of the district court or
20 the clerk of the bankruptcy appellate
21 panel if filing by electronic means is
22 authorized by local rule promulgated
23 pursuant to Rule 8018.

* * * * *

COMMITTEE NOTE

This rule is amended to permit, but not require, district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules that allow filing of documents by electronic means, subject to the limitations contained in Rule 5005(a)(2). See the committee note to the amendments to Rule 5005. Other amendments to this rule are stylistic.

GAP Report on Rule 8008. No changes since publication, except for stylistic changes.

Rule 9006. Time

* * * * *

1 (c) REDUCTION.

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2 * * * * *

3 (2) *Reduction Not Permitted.*

4 The court may not reduce the time

5 for taking action ~~under~~ pursuant to

6 Rules ~~2002(a)(4) and (a)(8)~~

7 2002(a)(7), 2003(a), 3002(c), 3014,

8 3015, 4001(b)(2), (c)(2), 4003(a),

9 4004(a), 4007(c), 8002, and

10 9033(b).

* * * * *

COMMITTEE NOTE

Subdivision (c)(2) is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8) to Rule 2002(a)(7).

GAP Report on Rule 9006. No changes since publication, except for a stylistic change.