107th Congress, 2d Session – – – – – – – – – – – – – House Document 107–205

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

MAY 3, 2002.—Referred to the Committee on the Judiciary and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

79–418 WASHINGTON : 2002

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 29, 2002.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

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 Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

WILLIAM H. REHNQUIST.

APR 29 2002

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 1004, 2004, 2015, 4004, 9014, and 9027, and new Rule 1004.1.

[See infra., pp. __ __ __.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2002, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings 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.

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1004. Involuntary Petition Against a Partnership

After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall promptly send to or serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

Rule 1004.1. Petition for an Infant or Incompetent Person

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may

file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 2004. Examination

* * * * *

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS. The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which

the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

* * * * *

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

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall

* * * * *

(5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter.

* * * * *

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 under 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,

(C) the debtor has filed a waiver under § 727(a)(10),

(D) a motion to dismiss the case under § 707 is pending,

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending,

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e) is pending, or

(G) 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 the clerk upon the commencement of a case under the Code.

* * * * *

Rule 9014. Contested Matters

(a) MOTION. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

(c) APPLICATION OF PART VII RULES. Unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. An entity that desires to perpetuate testimony may proceed in the same

manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

(d) TESTIMONY OF WITNESSES. Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.

(e) ATTENDANCE OF WITNESSES. The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.

Rule 9027. Removal

(a) NOTICE OF REMOVAL.

* * * * *

(3) *Time for filing; civil action initiated after commencement of the case under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

* * * * *

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

November 19, 2001

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 consideration of the Court proposed amendments to Rules 1004, 2004, 2015, 4004, 9014, and 9027, and new Rule 1004.1 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 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.

Leonidas Ralph Mecham
Secretary

Attachments

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

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

* * * * *

AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1004, 2004, 2014,[1] 2015, 4004, 9014, and 9027, new Rule 1004.1, and amendments to Official Forms 1 and 15 with a recommendation that they be approved and transmitted to the Judicial Conference. The amendments and new rule were circulated to the bench and bar for comment in August 2000. A public hearing was held in Washington, D.C. on January 26, 2001.

The proposed amendment to **Rule 1004 (Involuntary Petition Against a Partnership)** eliminates the provision implying that all general partners must consent to the filing of a voluntary petition by the partnership. The filing requirements are a matter of substantive law and outside the scope of the rules.

Proposed new **Rule 1004.1 (Petition for an Infant or Incompetent Person)** establishes procedures for an infant or an incompetent person to commence a case. It is based on the procedures contained in Civil Rule 17(c).

Rule 2004 (Examination) would be amended to compel a witness to attend an examination of an entity under procedures governing a subpoena in Civil Rule 45, whether the examination is conducted within or outside the district in which the case is pending. The

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[1]The Advisory Committee on Bankruptcy Rules withdrew proposed amendments to Rule 2014 for further consideration.

proposed amendments also make clear that an attorney authorized to practice either in the court in which the case is pending or in the court for the district in which the examination will be held may issue and sign the subpoena on behalf of the court for the district in which the examination will be held.

[Rule 2014 (Employment of a Professional Person) — Withdrawn]

Rule 2015 (Duty to Keep Records, Make Reports and Give Notice of Case) would be amended to clarify that the trustee or debtor in possession in a Chapter 11 case must report disbursements during the time that quarterly fees are required to be paid under 28 U.S.C. § 1930(a)(6).

The proposed amendment of **Rule 4004 (Grant or Denial of Discharge)** postpones the entry of discharge in a Chapter 7 case on the filing of a motion to dismiss under § 707 of the Bankruptcy Code.

Rule 9014 (Contested Matters) would be amended to apply the provisions of Rule 7009, governing pleading on special matters, and Rule 7017, governing real parties in interest, including infants and incompetent persons, to contested matters; permit service of papers—other than the initial motion—by electronic means; clarify that an evidentiary hearing must be held if a disputed, unresolved material issue of fact exists; and establish procedures notifying attorneys at an early date of a hearing at which witnesses are to appear.

Rule 9027 (Removal) would be amended to clarify the time limits for filing a notice of removal of a claim or cause of action filed after the commencement of a bankruptcy case, whether the bankruptcy case is pending, suspended, dismissed, or closed.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Bankruptcy Rules 1004, 2004, [2014 — withdrawn], 2015, 4004,

9014, and 9027, and new Rule 1004.1 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.

* * * * *

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ANTHONY J. SCIRICA
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

WILL L. GARWOOD
APPELLATE RULES

A. THOMAS SMALL
BANKRUPTCY RULES

DAVID F. LEVI
CIVIL RULES

W. EUGENE DAVIS
CRIMINAL RULES

MILTON I. SHADUR
EVIDENCE RULES

TO: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable A. Thomas Small, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 15, 2001

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 15-16, 2001, in New Orleans, Louisiana. The Advisory Committee considered public comments regarding proposed amendments to the Bankruptcy Rules that were published in August, 2000.

The proposed amendments published in 2000 include revisions to seven Bankruptcy Rules (Rules 1004, 2004, [2014 - withdrawn], 2015, 4004, 9014, and 9027). Also proposed were a new rule, Rule 1004.1, and amendments to Official Form 1. The Advisory Committee received twenty-four written comments on the proposals. Several of the comments were offered on behalf of groups, including bankruptcy judges from several districts, the Commercial Law League of America, the National Bankruptcy Conference, the Insolvency Committee of the State Bar of California, Committees of the Association of the Bar of the City of New York, and Bar Association Committees from Detroit and the State of Michigan.

A public hearing was held in Washington, D.C. on January 26, 2001, to consider the proposals. Four witnesses were scheduled to

testify at the hearing, but Judith Greenstone-Miller, Esq., was unable to attend. Judy B. Calton, Esq., testified in place of Ms. Greenstone-Miller. Ms. Calton's testimony was offered on behalf of the Commercial Law League (for Ms. Greenstone-Miller), and on behalf of the Committees of the State Bar of Michigan and the Detroit Metropolitan Bar Association. Robert A. Greenfield, Esq., testified on behalf of the National Bankruptcy Conference. Professor Todd Zywicki of George Mason University School of Law testified in his personal capacity at the public hearing.

At the March 2001 meeting, the Advisory Committee considered the written comments and the testimony presented at the public hearing. The Advisory Committee approved each of the proposed amendments to the rules and will present them to the Standing Committee at its June 2001 meeting for final approval and transmission to the Judicial Conference. The Advisory Committee also will present amendments to Official Forms 1 (Voluntary Petition) and 15 (Order Confirming Plan) to the Standing Committee for final approval and transmission to the Judicial Conference.

The Advisory Committee also approved a preliminary draft of proposed amendments to Bankruptcy Rules 1007, 2003, 2009, 2016, and 7007.1, and will present them to the Standing Committee at its June 2001 meeting with a request that they be published for comment. The Advisory Committee also approved a preliminary draft of proposed amendments to Official Forms 1 (Voluntary Petition), 5 (Involuntary Petition), and 17 (Notice of Appeal), and will present them to the Standing Committee at its June 2001 meeting with a request that they be published for comment.

II. Action Items

A. Proposed Amendments to Bankruptcy Rules 1004, 2004, [2014 - withdrawn], 2015, 4004, 9014, and 9027, Proposed New Rule 1004.1, and Proposed Amendments to Official Forms 1 and 15 Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The preliminary draft of the proposed amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 2000, and a public hearing on the preliminary draft was held on January 26, 2001. Three persons testified at the public hearing held in Washington, D.C.

There were twenty-four written comments received concerning the proposed amendments to the rules. These comments, and the testimony provided at the public hearing are summarized on a rule-by-rule basis following the text of each rule set out below. The Advisory Committee reviewed these comments and the testimony, and made several revisions to the published draft. The post-publication revisions are identified under the heading Changes Made After Publication and Comments.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1004 is amended to clarify that the rule implements § 303(b)(3)(A) of the Bankruptcy Code and is not intended to establish any substantive standard for the commencement of a voluntary case by a partnership.

(b) Rule 1004.1 is added to set out the manner in which a case is commenced on behalf of an infant or incompetent person. Rule 1004.1 is derived from Rule 17(c) F.R. Civ. P.

(c) Rule 2004 is amended to clarify that an examination ordered under that rule may be held outside of the district in which the case is pending. The court where the examination will be held issues the subpoena, and it is served in

the manner provided in Rule 45 F.R.Civ.P., made applicable by Rule 9016. Moreover, the rule makes clear that an attorney authorized to practice either in the court in which the case is pending or in the court for the district in which the examination will be held may issue and sign the subpoena on behalf of the court for the district in which the examination will be held.

(d) [Rule 2014 - withdrawn]

(e) Rule 2015(a)(5) is amended to conform to 28 U.S.C. § 1930(a)(6), which was amended in 1996.

(f) Rule 4004(c) is amended to provide that the filing of a motion under § 707 of the Bankruptcy Code to dismiss a case postpones the entry of the discharge. Currently, only motions brought under § 707(b) postpone entry of the discharge.

(g) Rule 9014 is amended to include Rule 7009 on pleading special matters, and Rule 7017 on real parties in interest, infants and incompetent persons, to the list of Rules applicable in contested matters. It is also amended to permit service of papers, other than the initial motion, under Rule 5(b) F.R.Civ.P. Subdivision (d) is added to clarify that testimony regarding material disputed factual matters is to be taken in the same manner as in an adversary proceeding. Subdivision (e) is added to address problems of local variation in procedures for the appearance of witnesses by requiring that the court provide a mechanism to enable attorneys to know whether the presence of a witness is necessary for a particular hearing.

(h) Rule 9027(a)(3) is amended to clarify that the time limits for filing a notice of removal of a claim or cause of action apply to any claim or cause of action initiated after the commencement of a bankruptcy case, whether the bankruptcy case is still pending or has been suspended, dismissed, or closed.

(i) Official Form 1 is the form of a voluntary petition, and it is amended to require the debtor to disclose ownership or possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety.

(j) Official Form 15 is the form of an order confirming a plan, and it is amended to conform to amendments to Rule 3020 that will take effect December 1, 2001.

3. *Text of Proposed Amendments to Rules 1004, 2004, 2014,*[1] *2015, 4004, 9014, and 9027, and Text of New Rule 1004.1*

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[1] The Advisory Committee on Bankruptcy Rules withdrew proposed amendments to Rule 2014 for further consideration.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1004. ~~Partnership Petition~~ Involuntary Petition Against a Partnership.

1 ~~(a) *VOLUNTARY PETITION.* A voluntary petition may~~
2 ~~be filed on behalf of a partnership by one or more general~~
3 ~~partners if all general partners consent to the petition~~
4 ~~(b) *INVOLUNTARY PETITION; NOTICE AND SUMMONS.*~~
5 After filing of an involuntary petition under § 303(b)(3) of the
6 Code, (1) the petitioning partners or other petitioners shall
7 ~~cause forthwith a copy of the petition to be sent~~ promptly send
8 to or ~~served~~ serve on each general partner who is not a
9 petitioner a copy of the petition; and (2) the clerk shall
10 promptly issue ~~forthwith~~ a summons for service on each
11 general partner who is not a petitioner. Rule 1010 applies to
12 the form and service of the summons.

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

COMMITTEE NOTE

Section 303(b)(3)(A) of the Code provides that fewer than all of the general partners in a partnership may commence an involuntary case against the partnership. There is no counterpart provision in the Code setting out the manner in which a partnership commences a voluntary case. The Supreme Court has held in the corporate context that applicable nonbankruptcy law determines whether authority exists for a particular debtor to commence a bankruptcy case. *See Price v. Gurney*, 324 U.S. 100 (1945). The lower courts have followed this rule in the partnership context as well. *See, e.g., Jolly v. Pittore*, 170 B.R. 793 (S.D.N.Y. 1994); *Union Planters National Bank v. Hunters Horn Associates*, 158 B.R. 729 (Bankr. M.D. Tenn. 1993); *In re Channel 64 Joint Venture*, 61 B.R. 255 (Bankr. S.D. Oh. 1986). Rule 1004(a) could be construed as requiring the consent of all of the general partners to the filing of a voluntary petition, even if fewer than all of the general partners would have the authority under applicable nonbankruptcy law to commence a bankruptcy case for the partnership. Since this is a matter of substantive law beyond the scope of these rules, Rule 1004(a) is deleted as is the designation of subdivision (b).

The rule is retitled to reflect that it applies only to involuntary petitions filed against partnerships.

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

Rule 1004.1. Petition for an Infant or Incompetent Person.

1 If an infant or incompetent person has a representative,
2 including a general guardian, committee, conservator, or
3 similar fiduciary, the representative may file a voluntary
4 petition on behalf of the infant or incompetent person. An

5 infant or incompetent person who does not have a duly
6 appointed representative may file a voluntary petition by next
7 friend or guardian ad litem. The court shall appoint a guardian
8 ad litem for an infant or incompetent person who is a debtor
9 and is not otherwise represented or shall make any other order
10 to protect the infant or incompetent debtor.

COMMITTEE NOTE

This rule is derived from Rule 17(c) F.R. Civ. P. It does not address the commencement of a case filed on behalf of a missing person. *See, e.g., In re King*, 234 B.R. 515 (Bankr. D.N.M. 1999).

Changes Made After Publication and Comments. No changes were made.

Rule 2004. Examination

1 * * * * *

2 (c) COMPELLING ATTENDANCE AND
3 PRODUCTION OF DOCUMENTS ~~DOCUMENTARY~~
4 ~~EVIDENCE~~. The attendance of an entity for examination and
5 for the production of ~~documentary evidence~~ documents,
6 whether the examination is to be conducted within or without
7 the district in which the case is pending, may be compelled ~~in~~
8 ~~the manner~~ as provided in Rule 9016 for the attendance of a

9 witness ~~witnesses~~ at a hearing or trial. As an officer of the
10 court, an attorney may issue and sign a subpoena on behalf of
11 the court for the district in which the examination is to be held
12 if the attorney is admitted to practice in that court or in the
13 court in which the case is pending.
14 * * * * *

COMMITTEE NOTE

Subdivision (c) is amended to clarify that an examination ordered under Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F.R.Civ.P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F.R.Civ.P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice, even if admitted pro hac vice, either in the court in which the case is pending or in the court for the district in which the examination is to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F.R.Civ.P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, to ease the burdens of interdistrict law practice.

Changes Made After Publication and Comments. The typographical error was corrected, but no other changes were made.

Rule 2014. Employment of a Professional Person.**

1 ~~(a) APPLICATION FOR AN ORDER OF~~
2 ~~EMPLOYMENT. An order approving the employment of~~
3 ~~attorneys, accountants, appraisers, auctioneers, agents, or~~
4 ~~other professionals pursuant to § 327, § 1103, or § 1114 of~~
5 ~~the Code shall be made only on application of the trustee or~~
6 ~~committee. The application shall be filed and, unless the case~~
7 ~~is a chapter 9 municipality case, a copy of the application shall~~
8 ~~be transmitted by the applicant to the United States trustee.~~
9 ~~The application shall state the specific facts showing the~~
10 ~~necessity for the employment, the name of the person to be~~
11 ~~employed, the reasons for the selection, the professional~~
12 ~~services to be rendered, any proposed arrangement for~~
13 ~~compensation, and, to the best of the applicant's knowledge,~~
14 ~~all of the person's connections with the debtor, creditors, any~~
15 ~~other party in interest, their respective attorneys and~~

** The Advisory Committee on Bankruptcy Rules withdrew proposed amendments to Rule 2014 for further consideration.

16 accountants, the United States trustee, or any person
17 employed in the office of the United States trustee. The
18 application shall be accompanied by a verified statement of the
19 person to be employed setting forth the person's connections
20 with the debtor, creditors, any other party in interest, their
21 respective attorneys and accountants, the United States
22 trustee, or any person employed in the office of the United
23 States trustee.

24 (b) SERVICES RENDERED BY MEMBER OR
25 ASSOCIATE OF FIRM OF ATTORNEYS OR
26 ACCOUNTANTS. If, under the Code and this rule, a law
27 partnership or corporation is employed as an attorney, or an
28 accounting partnership or corporation is employed as an
29 accountant, or if a named attorney or accountant is employed,
30 any partner, member, or regular associate of the partnership,
31 corporation or individual may act as attorney or accountant so
32 employed, without further order of the court.

33 (a) APPLICATION FOR ORDER APPROVING
34 EMPLOYMENT. An application for an order approving the
35 employment of a professional person under §327, §1103, or

36 §1114 of the Code shall be in writing and may be made only
37 by the trustee or committee. The application shall state:
38 (1) specific facts showing why the employment is
39 necessary;
40 (2) the name of the person to be employed and
41 the reasons for the selection;
42 (3) the professional services to be rendered;
43 (4) any proposed arrangement for compensation;
44 and
45 (5) that, to the best of the trustee's or
46 committee's knowledge, the person to be employed is
47 eligible under the Code for employment for the purposes
48 set forth in the application.
49 (b) STATEMENT OF PROFESSIONAL. The
50 application shall be accompanied by a verified statement of the
51 person to be employed, made according to the best of that
52 person's knowledge, information, and belief, formed after an
53 inquiry reasonable under the circumstances, which shall state:
54 (1) that the person is eligible under the Code for
55 employment for the purposes set forth in the application;

56 (2) any interest that the person holds or represents
57 that is adverse to the estate;
58 (3) any interest in, relationship to, or connection
59 the person has with the debtor;
60 (4) any interest, connection, or relationship the
61 person has that may cause the court or a party in interest
62 reasonably to question whether the person is
63 disinterested under § 101;
64 (5) any relationship the person has with the United
65 States trustee, or with any employee of the United States
66 trustee, for the region in which the case is pending;
67 (6) the information required to be disclosed under
68 § 329(a) if the person is an attorney; and
69 (7) whether the person shared or has agreed to
70 share any compensation with any person, other than a
71 partner, employee, or regular associate of the person to
72 be employed, and if so, the details.

73 (c) SERVICE AND TRANSMITTAL OF
74 APPLICATION.
75 (1) The applicant shall serve a copy of the
76 application on:
77 (A) the trustee;
78 (B) the debtor and the debtor's attorney;
79 (C) any committee elected under §705 or
80 appointed under § 1102, or, if the case is a chapter
81 9 case or a chapter 11 case and no committee of
82 unsecured creditors has been appointed, on the
83 creditors included on the list filed under Rule
84 1007(d); and
85 (D) any other entity as the court may direct.
86 (2) Unless the case is a chapter 9 case, the
87 applicant shall transmit a copy of the application to the
88 United States trustee.
89 (d) SERVICES RENDERED BY MEMBER OR
90 ASSOCIATE OF FIRM OF EMPLOYED PROFESSIONAL.
91 If the court approves the employment of an individual,
92 partnership, or corporation, any partner, member, or regular

93 associate of the individual, partnership, or corporation may act
94 as the person so employed, without further order of the court.
95 If a partnership is employed, a further order approving
96 employment is not required if the partnership has dissolved
97 solely because a partner was added or withdrew.
98 (e) SUPPLEMENTAL STATEMENT OF
99 PROFESSIONAL. Within 15 days after becoming aware of
100 any undisclosed matter that is required to be disclosed under
101 Rule 2014(b), a person employed under this rule shall file a
102 supplemental statement, serve a copy on each entity listed in
103 Rule 2014(c), and, unless the case is a chapter 9 case, transmit
104 a copy to the United States trustee.

COMMITTEE NOTE

This rule has been rewritten to make stylistic changes and to make it conform more closely to the applicable provisions of the Code. Professionals seeking court approval of their employment must disclose any interest in, relationship with, or connection to the debtor. The professional also must disclose any interests, relationships, or connections that would cause the court or any party in interest reasonably to question whether the person is disinterested. The rule thus requires the professional to evaluate the need to disclose the information from the perspective of the court and other parties in interest. If the information would cause those persons reasonably to question whether the professional is disinterested, it must be disclosed.

This permits the United States trustee and other parties in interest an opportunity to evaluate whether to oppose the application.

As with any disclosure requirement, the person obligated to make the disclosure must first determine whether the rule requires disclosure of the particular information in question. The information may be so unrelated to the issue that it is unnecessary to make the disclosure. Or, the information may identify a direct connection with an entity other than the debtor, but the connection may be de minimus. In either instance, the professional must make an initial determination whether to investigate for the existence of these connections, and, if they exist, whether there is a need to disclose the connections. Notwithstanding this initial determination by the professional, the court still makes the ultimate determination as to whether the employment is proper under the circumstances. Moreover, since the United States trustee and other parties in interest can be heard on these issues, a professional must not fail to disclose any known or believed connection that reasonably could place into question the professional's disinterestedness.

The rule also sets out the service requirements for the application for the approval of employment. There is no provision requiring a hearing on the application. In most cases, an order approving the employment will be entered without a hearing. The court may set a hearing sua sponte or on request or may vacate an order issued under the rule upon motion of an interested party.

The rule does not address the standards that courts should apply in ruling on an application for employment of a professional.

Changes Made After Publication and Comments.

Several comments on the published proposal included concerns that the disclosure standards would be eased under the new version of the rule. While others commented that the proposal would not operate in that manner, the rule was revised to address that issue. Subdivision (b)(3) in the published version of the rule required that the professional disclose any interest, relationship, or connection that

might be relevant to a determination of disinterestedness. That provision is replaced by subdivisions (b)(3) and (4). Subdivision (b)(3) requires the professional to disclose all interests in, connections, or relationships the person has with the debtor. As regards interests, connections, and relationships with persons other than the debtor (or the United States trustee, see subdivision (b)(5)), the disclosure requirement is triggered if the information may cause a court or party in interest reasonably to question the person's disinterestedness.

This change is intended to clarify that the professional making the disclosure must evaluate interests, connections, and relationships from the perspective of the court and other parties in interest. The disclosure obligation must ensure that interested parties have sufficient information to evaluate whether the person is disinterested, and the court must have the information to determine disinterestedness. Thus, even if professionals do not believe that a particular interest, connection, or relationship affects their disinterestedness, they still must disclose the information if it may cause the court or a third party reasonably to question the professionals' disinterestedness.

Subdivisions (b)(4) through (6) are redesignated as subdivisions (b)(5) through (7).

The Committee Note was amended to reflect the changes made in the text of the rule.

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

1 (a) TRUSTEE OR DEBTOR IN POSSESSION. A
2 trustee or debtor in possession shall
3 * * * * *
4 (5) in a chapter 11 reorganization case, on or
5 before the last day of the month after each calendar
6 quarter during which there is a duty to pay fees under 28

7 U.S.C. § 1930(a)(6), ~~until a plan is confirmed or the case~~
8 ~~is converted or dismissed,~~ file and transmit to the United
9 States trustee a statement of ~~the~~ any disbursements made
10 during ~~such calendar~~ that quarter and ~~a statement of the~~
11 ~~amount~~ of ~~the~~ any fees payable under ~~required pursuant~~
12 ~~to~~ 28 U.S.C. § 1930(a)(6) ~~that has been paid~~ for ~~such~~
13 ~~calendar~~ that quarter.
14 * * * * *

COMMITTEE NOTE

Subdivision (a)(5) is amended to provide that the duty to file quarterly disbursement reports continues only so long as there is an obligation to make quarterly payments to the United States trustee under 28 U.S.C. § 1930(a)(6).

Other amendments are stylistic.

Changes Made After Publication and Comments. No changes were made.

Rule 4004. Grant or Denial of Discharge.

1 * * * * *
2 (c) GRANT OF DISCHARGE
3 (1) In a chapter 7 case, on expiration of the time
4 fixed for filing a complaint objecting to discharge and the

5 time fixed for filing a motion to dismiss the case under
6 Rule 1017(e), the court shall forthwith grant the
7 discharge unless:
8 (A) the debtor is not an individual,
9 (B) a complaint objecting to the discharge
10 has been filed,
11 (C) the debtor has filed a waiver under
12 § 727(a)(10),
13 (D) a motion to dismiss the case under ~~Rule~~
14 ~~1017(c)~~ § 707 is pending,
15 (E) a motion to extend the time for filing a
16 complaint objecting to the discharge is pending,
17 (F) a motion to extend the time for filing a
18 motion to dismiss the case under Rule 1017(e) is
19 pending, or
20 (G) the debtor has not paid in full the filing
21 fee prescribed by 28 U.S.C. § 1930(a) and any
22 other fee prescribed by the Judicial Conference of
23 the United States under 28 U.S.C. § 1930(b) that

24 is payable to the clerk upon the commencement of

25 a case under the Code.

26 * * * * *

COMMITTEE NOTE

Subdivision (c)(1)(D) is amended to provide that the filing of a motion to dismiss under § 707 of the Bankruptcy Code postpones the entry of the discharge. Under the present version of the rule, only motions to dismiss brought under § 707(b) cause the postponement of the discharge. This amendment would change the result in cases such as *In re Tanenbaum*, 210 B.R. 182 (Bankr. D. Colo. 1997).

Changes Made After Publication and Comments. No changes were made.

Rule 9014. Contested Matters

1 (a) MOTION. In a contested matter ~~in a case under the~~

2 ~~Code~~ not otherwise governed by these rules, relief shall be

3 requested by motion, and reasonable notice and opportunity

4 for hearing shall be afforded the party against whom relief is

5 sought. No response is required under this rule unless the

6 court ~~orders an answer to a motion~~ directs otherwise.

7 (b) SERVICE. The motion shall be served in the manner

8 provided for service of a summons and complaint by Rule

9 7004. ~~and, unless the court otherwise directs,~~ Any paper

10 served after the motion shall be served in the manner provided
11 by Rule 5(b) F.R. Civ.P.
12 (c) APPLICATION OF PART VII RULES. Unless the
13 court directs otherwise, the following rules shall apply: 7009,
14 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-
15 7056, 7064, 7069, and 7071. An entity that desires to
16 perpetuate testimony may proceed in the same manner as
17 provided in Rule 7027 for the taking of a deposition before an
18 adversary proceeding. The court may at any stage in a
19 particular matter direct that one or more of the other rules in
20 Part VII shall apply. The court shall give the parties notice of
21 any order issued under this paragraph to afford them a
22 reasonable opportunity to comply with the procedures
23 prescribed by the order. ~~An entity that desires to perpetuate~~
24 ~~testimony may proceed in the same manner as provided in~~
25 ~~Rule 7027 for the taking of a deposition before an adversary~~
26 ~~proceeding. The clerk shall give notice to the parties of the~~
27 ~~entry of any order directing that additional rules of Part VII~~
28 ~~are applicable or that certain of the rules of Part VII are not~~
29 ~~applicable. The notice shall be given within such time as is~~

30 ~~necessary to afford the parties a reasonable opportunity to~~
31 ~~comply with the procedures made applicable by the order.~~
32 (d) TESTIMONY OF WITNESSES. Testimony of
33 witnesses with respect to disputed material factual issues shall
34 be taken in the same manner as testimony in an adversary
35 proceeding.
36 (e) ATTENDANCE OF WITNESSES. The court shall
37 provide procedures that enable parties to ascertain at a
38 reasonable time before any scheduled hearing whether the
39 hearing will be an evidentiary hearing at which witnesses may
40 testify.

COMMITTEE NOTE

The list of Part VII rules that are applicable in a contested matter is extended to include Rule 7009 on pleading special matters, and Rule 7017 on real parties in interest, infants and incompetent persons, and capacity. The discovery rules made applicable in adversary proceedings apply in contested matters unless the court directs otherwise.

Subdivision (b) is amended to permit parties to serve papers, other than the original motion, in the manner provided in Rule 5(b) F.R. Civ.P. When the court requires a response to the motion, this amendment will permit service of the response in the same manner as an answer is served in an adversary proceeding.

Subdivision (d) is added to clarify that if the motion cannot be decided without resolving a disputed material issue of fact, an evidentiary hearing must be held at which testimony of witnesses is

taken in the same manner as testimony is taken in an adversary proceeding or at a trial in a district court civil case. Rule 43(a), rather than Rule 43(e), F.R. Civ.P. would govern the evidentiary hearing on the factual dispute. Under Rule 9017, the Federal Rules of Evidence also apply in a contested matter. Nothing in the rule prohibits a court from resolving any matter that is submitted on affidavits by agreement of the parties.

Subdivision (e). Local procedures for hearings and other court appearances in a contested matter vary from district to district. In some bankruptcy courts, an evidentiary hearing at which witnesses may testify usually is held at the first court appearance in the contested matter. In other courts, it is customary for the court to delay the evidentiary hearing on disputed factual issues until some time after the initial hearing date. In order to avoid unnecessary expense and inconvenience, it is important for attorneys to know whether they should bring witnesses to a court appearance. The purpose of the final sentence of this rule is to require that the court provide a mechanism that will enable attorneys to know at a reasonable time before a scheduled hearing whether it will be necessary for witnesses to appear in court on that particular date.

Other amendments to this rule are stylistic.

Changes Made After Publication and Comments:

The Advisory Committee made two changes to subdivision (d) after considering the comments received addressing the proposed rule. First, the word "material" is inserted to make explicit that which was implied in the published version of the proposed rule. Second, the reference to F.R.Civ.P. 43(a) was removed. The purpose of proposed subdivision (d) was to recognize that testimony should be taken in the same manner in both contested matters and adversary proceedings. The revision to the published rule states this more directly.

The Committee Note was amended to reflect the changes made in the text of the rule.

Rule 9027. Removal

1 (a) NOTICE OF REMOVAL.

2 * * * * *

3 (3) *Time for filing; civil action initiated after*
4 *commencement of the case under the Code.* ~~If a case~~
5 ~~under the Code is pending when a claim or cause of~~
6 ~~action is asserted in another court,~~ If a claim or cause of
7 action is asserted in another court after the
8 commencement of a case under the Code, a notice of
9 removal may be filed with the clerk only within the
10 shorter of (A) 30 days after receipt, through service or
11 otherwise, of a copy of the initial pleading setting forth
12 the claim or cause of action sought to be removed, or
13 (B) 30 days after receipt of the summons if the initial
14 pleading has been filed with the court but not served
15 with the summons.

16 * * * * *

COMMITTEE NOTE

Subdivision (a)(3) is amended to clarify that if a claim or cause of action is initiated after the commencement of a bankruptcy case, the time limits for filing a notice of removal of the claim or cause of action

apply whether the case is still pending or has been suspended, dismissed, or closed.

Changes Made After Publication and Comments: No changes were made.

○