

AMENDMENTS TO THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE

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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 2, 1995.—Referred to the Committee on the Judiciary and ordered  
to be printed

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U.S. GOVERNMENT PRINTING OFFICE



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

CHAMBERS OF  
THE CHIEF JUSTICE

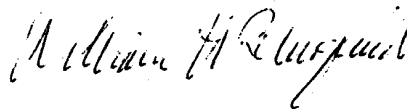
April 27, 1995

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. To maintain uniformity between revised and unrevised Rules, the Court has edited the amendments transmitted to the Supreme Court by the Judicial Conference of the United States to use the word "shall" in a consistent manner.

The rules are accompanied by an excerpt from the report of the Judicial Conference of the United States' Committee on Rules of Practice and Procedure and that Committee's Advisory Committee Notes. In order to minimize confusion, a footnote noting the changes made by the Supreme Court has been added to the marked-up version of the proposed amendments that accompanies the Advisory Committee Notes.

Sincerely,



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

SUPREME COURT OF THE UNITED STATES

Thursday, April 27, 1995

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 8018 and 9029.

[See infra., pp. \_\_\_\_\_.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 1995, 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 8018. Rules by Circuit Councils and District Courts;  
Procedure When There is No Controlling Law**

**(a) Local Rules by Circuit Councils and District Courts.**

**(1) Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) and the district courts may, acting by a majority of the judges of the council or district court, make and amend rules governing practice and procedure for appeals from orders or judgments of bankruptcy judges to the respective bankruptcy appellate panel or district court consistent with -- but not duplicative of -- Acts of Congress and the rules of this Part VIII. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals.**

**(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights**

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because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is No Controlling Law. A bankruptcy appellate panel or district judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the circuit council or district court. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

**Rule 9029. Local Bankruptcy Rules;  
Procedure When There is No Controlling Law**

(a) Local Bankruptcy Rules.

(1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with -- but not

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duplicative of -- Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with -- but not duplicative of -- Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is No Controlling Law. A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the

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**district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.**

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

L. RALPH MECHAM  
DIRECTOR

CLARENCE A. LEE, JR.  
ASSOCIATE DIRECTOR

WASHINGTON, D.C. 20544

November 2, 1994

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 8018 and 9029 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 1994**

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. Recommended for Approval and Transmission**

The Advisory Committee on Bankruptcy Procedure submitted to your committee proposed amendments to Bankruptcy Rules 8018, 9029, and 9037.<sup>\*</sup> The proposed amendments were circulated to bench and bar for comment in October 1993. The scheduled public hearing on the amendments was canceled, because no request to appear was received by the committee.

The proposed amendments to Rule 8018 (Rules by Circuit Councils and District Courts) dealing with local rules by circuit councils and district courts conform the rule to the proposed amendments to Rule 9029 (Local Bankruptcy Rules) dealing with local bankruptcy rules. The proposed amendments to both rules are counterparts to the proposed amendments to the other sets of rules, and would: (a) require that local court rules be numbered in accordance with any uniform numbering system prescribed by the Judicial Conference, (b) provide that a nonwillful violation of a local rule imposing a requirement of form may not be sanctioned in any way that would cause the party to lose rights, and (c) permit the imposition of a sanction for noncompliance with a local court procedure not contained in a local rule only if a party has had actual notice of the requirement.

The proposed amendment to Rule 9037 (Technical Amendments) would have authorized the Judicial Conference to make technical amendments to the rules. Your committee decided not to approve it and its counterparts in the other sets of rules for the reasons previously stated regarding the proposed changes to Appellate Rule 49.

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 the proposed amendments to Bankruptcy Rules 8018 and 9029 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.

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<sup>\*</sup> The Standing Committee did not approve the proposed amendment to Rule 9037 for submission to the Judicial Conference.



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

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CRIMINAL RULES

RALPH K. WRITER, JR.  
EVIDENCE RULES

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

FROM: Honorable Paul Mannes, Chair  
Advisory Committee on Bankruptcy Rules

SUBJECT: Proposed Amendments to Bankruptcy Rules 8018,  
9029, and 9037

DATE: May 12, 1994

On behalf of the Advisory Committee on Bankruptcy Rules, it is my honor to transmit proposed amendments to Bankruptcy Rules 8018, 9029, and 9037 for consideration by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

These proposed amendments are unusual in their origin. Whereas original recommendations for proposed amendments usually derive from the advisory committee and are presented to the Standing Committee for its approval, the original suggestions for proposed amendments governing local rules, procedure when there is no controlling law, and technical amendments originated from the Standing Committee with a view toward uniformity among the four bodies of federal procedural rules -- Appellate, Bankruptcy, Civil, and Criminal. As a result of the coordinated efforts of the reporter to the standing committee and the reporters to the advisory committees, the language of the proposed amendments on these subjects is substantially the same in all four bodies of federal rules.

The Advisory Committee on Bankruptcy Rules favors the proposed amendments to Rules 8018 and 9029 relating to local rules and procedure when there is no controlling law, and recommends that they be adopted with one change discussed below. At the Standing Committee meeting in June 1993, however, the Advisory Committee on Bankruptcy Rules expressed its opposition

to the proposed new Rule 9037 on technical amendments. The other advisory committees and the Standing Committee did not share that opposition at that time and, pursuant to the Standing Committee's request, the Advisory Committee on Bankruptcy Rules prepared for publication the preliminary draft of Rule 9037.

The preliminary draft of the proposed amendments to Bankruptcy Rules 8018, 9029, and 9037 was published for comment by the bench and bar in October 1993. Comments were received from seven respondents. A summary of these comments is enclosed. A public hearing was scheduled to be held in Washington, D.C. on March 25, 1994, but was canceled because of the lack of witnesses requesting to testify. Based on the comments received, it does not appear that the proposed amendments are the subject of substantial controversy among the bench and bar.

At its meeting on February 24-25, 1994, the Advisory Committee again reviewed the preliminary draft of these proposed amendments and voted to recommend one change in the published language. The Advisory Committee voted unanimously to change the word "negligent" to "nonwillful" in the proposed amendments to Rules 8018(a)(2) and 9029(a)(2), and in the related committee notes, dealing with local rules imposing requirements of form. In particular, the Advisory Committee recommends that the published language of Rules 8018(a)(2) and 9027(a)(2) be changed as follows:

"A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a negligent nonwillful failure to comply with the requirement."

If this change is made, the following sentence in the committee note also should be changed.

"The proscription of paragraph (2) is narrowly drawn -- covering only violations ~~attributable to negligence~~ that are not willful and only those involving local rules directed to matters of form."

The Advisory Committee believes that a finding of negligence should not have to be made for a violation to be protected by this rule. Other nonwillful violations also should be protected, such as when the failure to follow a local rule relating to form is due to reasons beyond the lawyer's control, or in other situations in which the lawyer's conduct does not rise to the level of negligence.

\* \* \* \* \*

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

**Rule 8018. Rules by Circuit Councils and  
District Courts; Procedure When There is  
No Controlling Law**

- 1        (a) Local Rules by Circuit  
2 Councils and District Courts.
- 3        (1) Circuit councils which have  
4 authorized bankruptcy appellate panels  
5 pursuant to 28 U.S.C. § 158(b) and the  
6 district courts may, ~~by action of acting~~  
7 by a majority of the judges of the  
8 council or district court, make and  
9 amend rules governing practice and  
10 procedure for appeals from orders or  
11 judgments of bankruptcy judges to the  
12 respective bankruptcy appellate panel or  
13 district court, ~~not inconsistent~~  
14 consistent with -- but not duplicative  
15 of -- Acts of Congress and the rules of

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\*New matter is underlined, matter to be omitted is lined through. In its April 27, 1995 transmittal of the amendments to Congress the Supreme Court substituted the word "shall" for the word "must" throughout the amendments.

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16 this Part VIII. Local rules must  
17 conform to any uniform numbering system  
18 prescribed by the Judicial Conference of  
19 the United States. Rule 83  
20 F.R.Civ.P. governs the procedure for  
21 making and amending rules to govern  
22 appeals.

23 (2) A local rule imposing a  
24 requirement of form must not be enforced  
25 in a manner that causes a party to lose  
26 rights because of a nonwillful failure  
27 to comply with the requirement. In all  
28 ~~cases not provided for by rule, the~~  
29 ~~district court or the bankruptcy~~  
30 ~~appellate panel may regulate its~~  
31 ~~practice in any manner not inconsistent~~  
32 ~~with these rules.~~

33 (b) Procedure When There is No  
34 Controlling Law. A bankruptcy appellate  
35 panel or district judge may regulate

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36 practice in any manner consistent with  
37 federal law, these rules, Official  
38 Forms, and local rules of the circuit  
39 council or district court. No sanction  
40 or other disadvantage may be imposed for  
41 noncompliance with any requirement not  
42 in federal law, federal rules, Official  
43 Forms, or the local rules of the circuit  
44 council or district court unless the  
45 alleged violator has been furnished in  
46 the particular case with actual notice  
47 of the requirement.

## COMMITTEE NOTE

The amendments to this rule conform to the amendments to Rule 9029. See Committee Note to the amendments to Rule 9029.

Rule 9029. Local Bankruptcy Rules;  
Procedure When There is No Controlling  
Law

1 (a) Local Bankruptcy Rules.

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2        (1) Each district court ~~by action~~  
3 ~~of acting by~~ a majority of the ~~its~~  
4 ~~district~~ judges thereof may make and  
5 amend rules governing practice and  
6 procedure in all cases and proceedings  
7 within the district court's bankruptcy  
8 jurisdiction which are ~~not inconsistent~~  
9 consistent with -- but not duplicative  
10 of -- Acts of Congress and these rules  
11 and which do not prohibit or limit the  
12 use of the Official Forms. Rule 83  
13 F.R.Civ.P. governs the procedure for  
14 making local rules. A district court  
15 may authorize the bankruptcy judges of  
16 the district, subject to any limitation  
17 or condition it may prescribe and the  
18 requirements of 83 F.R.Civ.P., to make  
19 and amend rules of practice and  
20 procedure which are ~~not inconsistent~~  
21 consistent with -- but not duplicative

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22 of -- Acts of Congress and these rules  
23 and which do not prohibit or limit the  
24 use of the Official Forms. Local rules  
25 must conform to any uniform numbering  
26 system prescribed by the Judicial  
27 Conference of the United States.

28 (2) A local rule imposing a  
29 requirement of form must not be enforced  
30 in a manner that causes a party to lose  
31 rights because of a nonwillful failure  
32 to comply with the requirement. In all  
33 cases not provided for by rule, the  
34 court may regulate its practice in any  
35 manner not inconsistent with the  
36 Official Forms or with these rules or  
37 those of the district in which the court  
38 acts.

39 (b) Procedure When There is No  
40 Controlling Law. A judge may regulate  
41 practice in any manner consistent with

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42 federal law, these rules, Official  
43 Forms, and local rules of the district.  
44 No sanction or other disadvantage may be  
45 imposed for noncompliance with any  
46 requirement not in federal law, federal  
47 rules, Official Forms, or the local  
48 rules of the district unless the alleged  
49 violator has been furnished in the  
50 particular case with actual notice of  
51 the requirement.

## COMMITTEE NOTE

Subdivision (a). This rule is amended to reflect the requirement that local rules be consistent not only with applicable national rules but also with Acts of Congress. The amendment also states that local rules should not repeat applicable national rules and Acts of Congress.

The amendment also requires that the numbering of local rules conform with any uniform numbering system that may be prescribed by the Judicial Conference. Lack of uniform numbering might create unnecessary traps for counsel and litigants. A uniform

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numbering system would make it easier for an increasingly national bar and for litigants to locate a local rule that applies to a particular procedural issue.

Paragraph (2) of subdivision (a) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. For example, a party should not be deprived of a right to a jury trial because its attorney, unaware of -- or forgetting-- a local rule directing that jury demands be noted in the caption of the case, includes a jury demand only in the body of the pleading. The proscription of paragraph (2) is narrowly drawn -- covering only violations that are not willful and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney stubbornly or repeatedly violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form -- for example, a local rule requiring that a party demand a jury trial within a specified time period to avoid waiver of the right to a trial by jury.

Subdivision (b). This rule provides flexibility to the court in regulating practice when there is no controlling law. Specifically, it permits the court to regulate practice in any manner consistent with federal

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law, with rules adopted under 28 U.S.C. § 2075, with Official Forms, and with the district's local rules.

This rule recognizes that courts rely on multiple directives to control practice. Some courts regulate practice through the published Federal Rules and the local rules of the court. Some courts also have used internal operating procedures, standing orders, and other internal directives. Although such directives continue to be authorized, they can lead to problems. Counsel or litigants may be unaware of various directives. In addition, the sheer volume of directives may impose an unreasonable barrier. For example, it may be difficult to obtain copies of the directives. Finally, counsel or litigants may be unfairly sanctioned for failing to comply with a directive. For these reasons, the amendment to this rule disapproves imposing any sanction or other disadvantage on a person for noncompliance with such an internal directive, unless the alleged violator has been furnished in a particular case with actual notice of the requirement.

There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular judge unless the party or attorney has actual notice of those requirements. Furnishing litigants with a copy outlining the judge's practices -- or attaching instructions to a notice setting a case for conference or trial

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-- would suffice to give actual notice,  
as would an order in a case specifically  
adopting by reference a judge's standing  
order and indicating how copies can be  
obtained.

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