

105th Congress, 1st Session - - - - - House Document 105-70

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 PROCE-
DURE THAT HAVE BEEN ADOPTED BY THE COURT, PURSUANT
TO 28 U.S.C. 2075



APRIL 15, 1997.—Referred to the Committee on the Judiciary and ordered
to be printed

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WASHINGTON : 1997

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

CHAMBERS OF
THE CHIEF JUSTICE

April 11, 1997

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

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,

A handwritten signature in dark ink, appearing to read "William H. Rehnquist", is written over the typed name "William H. Rehnquist". The signature is fluid and cursive, with a prominent "W" and "R".

SUPREME COURT OF THE UNITED STATES

April 11, 1997

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1010, 1019, 2002, 2007.1, 3014, 3017, 3018, 3021, 8001, 8002, 9011, and 9035, and new Rules 1020, 3017.1, 8020, and 9015.

[See infra., pp. ____ — ____.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 1997, 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 1010. Service of Involuntary Petition and
Summons; Petition Commencing Ancillary Case**

On the filing of an involuntary petition or a petition commencing a case ancillary to a foreign proceeding the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. When a petition commencing an ancillary case is filed, service shall be made on the parties against whom relief is sought pursuant to § 304(b) of the Code and on any other parties as the court may direct. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e)

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and Rule 4(l) F.R.Civ.P. apply when service is made or attempted under this rule.

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:

* * * * *

(3) **CLAIMS FILED BEFORE CONVERSION.**

All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case.

* * * * *

(5) **FILING FINAL REPORT AND SCHEDULE OF POSTPETITION DEBTS.**

(A) Conversion of Chapter 11 or Chapter 12

Case. Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the

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debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:

(i) not later than 15 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;

(B) *Conversion of Chapter 13 Case.* Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7,

(i) the debtor, not later than 15 days

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after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account;

(C) *Conversion After Confirmation of a Plan.*

Unless the court orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file:

(i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13

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to chapter 7 and § 348(f)(2) does not apply;

(ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and

(iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion.

(D) *Transmission to United States Trustee.*

The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).

* * * * *

Rule 1020. Election to be Considered a Small Business in a Chapter 11 Reorganization Case

In a chapter 11 reorganization case, a debtor that is a

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small business may elect to be considered a small business by filing a written statement of election not later than 60 days after the date of the order for relief.

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:

- (1) the meeting of creditors under § 341 or § 1104(b) of the Code;

* * * * *

(n) **CAPTION.** The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by

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§ 342(c) of the Code.

* * * * *

**Rule 2007.1. Appointment of Trustee
or Examiner in a Chapter 11 Reorganization Case**

(a) ORDER TO APPOINT TRUSTEE OR EXAMINER. In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner under § 1104(a) or § 1104(c) of the Code shall be made in accordance with Rule 9014.

(b) ELECTION OF TRUSTEE.

(1) *Request for an Election.* A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Rule 5005 within the time prescribed by § 1104(b) of the Code. Pending court approval of the person elected, any person appointed

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by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee.

(2) *Manner of Election and Notice.* An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given as provided in Rule 2002. The United States trustee shall preside at the meeting. A proxy for the purpose of voting in the election may be solicited only by a committee of creditors appointed under § 1102 of the Code or by any other party entitled to solicit a proxy pursuant to Rule 2006.

(3) *Report of Election and Resolution of Disputes.*

(A) *Report of Undisputed Election. If*

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the election is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person elected and a statement that the election is undisputed. The United States trustee shall file with the report an application for approval of the appointment in accordance with subdivision (c) of this rule. The report constitutes appointment of the elected person to serve as trustee, subject to court approval, as of the date of entry of the order approving the appointment.

(B) *Disputed Election.* If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute and listing the name and

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address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee. Not later than the date on which the report of the disputed election is filed, the United States trustee shall mail a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed

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under § 1102 of the Code. Unless a motion for the resolution of the dispute is filed not later than 10 days after the United States trustee files the report, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee. If a motion for the resolution of the dispute is timely filed, and the court determines the result of the election and approves the person elected, the report will constitute appointment of the elected person as of the date of entry of the order approving the appointment.

(c) **APPROVAL OF APPOINTMENT.** An order approving the appointment of a trustee elected under § 1104(b) or appointed under § 1104(d), or the appointment of an examiner under § 1104(d) of the Code, shall be made

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on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, and persons employed in the office of the United States trustee. Unless the person has been elected under § 1104(b), the application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee.

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**Rule 3014. Election Under § 1111(b) by Secured
Creditor in Chapter 9 Municipality or Chapter 11
Reorganization Case**

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

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**Rule 3017. Court Consideration of Disclosure
Statement in Chapter 9 Municipality and Chapter 11
Reorganization Cases**

(a) HEARING ON DISCLOSURE STATEMENT
AND OBJECTIONS. Except as provided in Rule 3017.1,
after a disclosure statement is filed in accordance with Rule
3016(b), the court shall hold a hearing on at least 25 days'
notice to the debtor, creditors, equity security holders and
other parties in interest as provided in Rule 2002 to consider
the disclosure statement and any objections or modifications
thereto. The plan and the disclosure statement shall be mailed
with the notice of the hearing only to the debtor, any trustee
or committee appointed under the Code, the Securities and
Exchange Commission, and any party in interest who requests
in writing a copy of the statement or plan. Objections to the
disclosure statement shall be filed and served on the debtor,
the trustee, any committee appointed under the Code, and any
other entity designated by the court, at any time before the

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disclosure statement is approved or by an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.

(b) **DETERMINATION ON DISCLOSURE STATEMENT.** Following the hearing the court shall determine whether the disclosure statement should be approved.

(c) **DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION.** On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) **TRANSMISSION AND NOTICE TO UNITED STATES TRUSTEE, CREDITORS, AND EQUITY**

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SECURITY HOLDERS. Upon approval of a disclosure statement, — except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders — the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the

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disclosure statement or a court-approved
summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not transmitted or only a summary of the plan is transmitted, the court opinion or the plan shall be provided on request of a party in interest at the plan proponent's expense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense,

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shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.

(e) **TRANSMISSION TO BENEFICIAL HOLDERS OF SECURITIES.** At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.

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**Rule 3017.1. Court Consideration of
Disclosure Statement in a Small Business Case**

(a) **CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT.** If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Rule 3016(b). On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

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(b) **APPLICATION OF RULE 3017.** Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).

(c) **FINAL APPROVAL.**

(1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.

(2) *Objections.* Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before

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final approval of the disclosure statement or by an earlier date as the court may fix.

(3) *Hearing.* If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure

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statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

* * * * *

Rule 3021. Distribution Under Plan

After confirmation of a plan, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims pursuant to Rule 3003(c)(5) that have been allowed. For the purpose of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the

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holders of stock and other equity securities, of record at the time of commencement of distribution unless a different time is fixed by the plan or the order confirming the plan.

**Rule 8001. Manner of Taking Appeal;
Voluntary Dismissal**

(a) **APPEAL AS OF RIGHT; HOW TAKEN.** An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) contain the names of all parties

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to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.

(b) **APPEAL BY LEAVE; HOW TAKEN.** An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

* * * * *

(e) **ELECTION TO HAVE APPEAL HEARD BY DISTRICT COURT INSTEAD OF BANKRUPTCY APPELLATE PANEL.** An election to have an appeal heard

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by the district court under 28 U.S.C. § 158(c)(1) may be made
only by a statement of election contained in a separate writing
filed within the time prescribed by 28 U.S.C. § 158(c)(1).

**Rule 8002. Time for Filing Notice of
Appeal**

* * * * *

(c) EXTENSION OF TIME FOR APPEAL.

(1) The bankruptcy judge may extend the time
for filing the notice of appeal by any party, unless the
judgment, order, or decree appealed from:

(A) grants relief from an automatic
stay under § 362, § 922, § 1201, or § 1301;

(B) authorizes the sale or lease of
property or the use of cash collateral under
§ 363;

(C) authorizes the obtaining of credit
under § 364;

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(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365;

(E) approves a disclosure statement under § 1125; or

(F) confirms a plan under § 943, § 1129, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the

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date of entry of the order granting the motion,
whichever is later.

**Rule 8020. Damages and Costs for
Frivolous Appeal**

If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

**Rule 9011. Signing of Papers; Representations to the
Court; Sanctions; Verification and Copies of Papers**

(a) SIGNATURE. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone

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number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, —

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension,

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modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **SANCTIONS.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

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(1) *How Initiated.*

(A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party

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prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such

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conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claim.

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made by or against the party which is, or
whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the
court shall describe the conduct determined to
constitute a violation of this rule and explain the basis
for the sanction imposed.

(d) INAPPLICABILITY TO DISCOVERY.

Subdivisions (a) through (c) of this rule do not apply to
disclosures and discovery requests, responses, objections, and
motions that are subject to the provisions of Rules 7026
through 7037.

(e) VERIFICATION. Except as otherwise specifically
provided by these rules, papers filed in a case under the Code
need not be verified. Whenever verification is required by
these rules, an unsworn declaration as provided in 28 U.S.C.
§ 1746 satisfies the requirement of verification.

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When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

Rule 9015. Jury Trials

(a) **APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE.** Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made pursuant to Rule 38(b) F.R.Civ.P. shall be filed in accordance with Rule 5005.

(b) **CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE.** If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28

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U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina

In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent that they are not inconsistent with any federal statute effective in the case.



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

October 10, 1996

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 new Rules 1020, 3017.1, 8020, and 9015, and proposed amendments to Rules 1010, 1019, 2002, 2007.1, 3014, 3017, 3018, 3021, 8001, 8002, 9011, and 9035 of the Federal Rules of Bankruptcy Procedure. The Judicial Conference recommends that these changes 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.

Leonidas Ralph Mecham

Attachments

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
SEPTEMBER 1996**

**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 Federal Rules of Bankruptcy Procedure **1010, 1019, 2002, 2007.1, 3014, 3017, 3018, 3021, 8001, 8002, 9011, and 9035** and proposed new Rules **1020, 3017.1, 8020, and 9015**, together with Committee Notes explaining their purpose and intent. Many of the changes conform to, or implement, the Bankruptcy Reform Act of 1994. The Act contains provisions on procedures governing, among other matters, small businesses, appointment of trustees, and jury trials. The proposed amendments — with the exception of Rule 1010 — and new rules had been circulated to the bench and bar for comment in September 1995. A public hearing was scheduled, but later canceled because no request to appear was received by the committee.

The proposed amendments to **Rule 1010** (*Service of Involuntary Petition and Summons; Petition Commencing Ancillary Case*) would conform certain references to subdivisions in Civil Rule 4 and Bankruptcy Rule 7004 that were changed in 1993, and

1996, respectively. The amendments are technical and not intended to make any substantive change.

After approving amendments to Rule 1010, your committee agreed with the request of the advisory committee not to publish them for comment because they were purely conforming and technical involving changes in certain cross-references and their publication for comment was not appropriate or necessary. Under section 4(d) of the *Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure*, “(t)he Standing Committee may eliminate the public notice and comment requirement if, in the case of a technical or conforming amendment, it determines that notice and comment are not appropriate or necessary.”

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*) would be amended to clarify the effect of a conversion of a case to a different chapter of the Bankruptcy Code and make stylistic improvements.

New Rule 1020 (*Election to be Considered a Small Business in a Chapter 11 Reorganization Case*) provides procedures and time limits for a small business to elect to be considered a small business in a chapter 11 case. The new rule implements certain provisions added to the Bankruptcy Code by the Bankruptcy Reform Act of 1994 that authorize a qualified debtor in a chapter 11 reorganization case to elect to be considered a small business.

Rule 2002 (*Notices to Creditors, Equity Security Holders, United States, and United States Trustee*) is amended to provide notice of a meeting called for the purpose of electing a chapter 11 trustee. In addition, the caption of every notice required to be given by the debtor to a creditor must include information mandated under § 342(c) of the Bankruptcy Code as amended by the Bankruptcy Reform Act of 1994.

Rule 2007.1 (*Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case*) is amended to provide procedures for the election of a chapter 11 trustee implementing § 1104(b) of the Bankruptcy Code as amended by the Bankruptcy Reform Act of 1994.

The proposed amendments to **Rule 3014** (*Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case*) would set a deadline for secured creditors to elect the application of § 1111(b)(2) of the Bankruptcy Code in a small business case when a conditionally-approved disclosure statement is approved finally without a hearing.

Rule 3017 (*Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases*) is amended to give the court flexibility in fixing the record date for determining the holders of securities who are entitled to receive a disclosure statement, ballot, and other materials in connection with the solicitation of votes on a plan.

New Rule 3017.1 (*Court Consideration of Disclosure Statement in a Small Business Case*) would implement § 1125(f), added by the Bankruptcy Reform Act of

1994, by providing procedures for the conditional and final approval of a disclosure statement in a small business chapter 11 case.

Rule 3018 (*Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case*) would be amended to provide a court with flexibility in fixing the record date for determining the holders of securities who may vote on a plan.

Rule 3021 (*Distribution Under Plan*) would be amended to provide flexibility in fixing the record date for determining the holders of securities who are entitled to receive distributions under a confirmed plan; to treat the holders of debt securities the same as other creditors by requiring that their claims be allowed to receive distribution; and to clarify that all interest holders whose interests have not been disallowed may receive a distribution under a confirmed plan.

Rule 8001 (*Manner of Taking Appeal; Voluntary Dismissal*) would be amended to conform to the 1994 Bankruptcy Reform Act's provisions that amended 28 U.S.C. § 158 to permit an appeal as of right from an order extending or reducing the exclusivity period for filing a chapter 11 plan under § 1121 of the Code. Subdivision (e) would be specifically amended to provide a procedure for electing to have an appeal heard by the district court rather than by a bankruptcy appellate panel, under 28 U.S.C. § 158(c)(1), as amended by the Act.

The proposed amendments to **Rule 8002** (*Time for Filing Notice of Appeal*) would allow a court, based on excusable neglect, to enter an order — more than 20 days after the expiration of the time to file a notice of appeal — permitting a party to file a notice of

appeal if the motion for an extension was timely and the notice of appeal is filed not later than ten days after the entry of the order extending the time; and to prohibit any extension of time to file a notice of appeal if the appeal is from certain types of orders.

New Rule 8020 (*Damages and Costs for Frivolous Appeal*) would be added to clarify the authority of a district court or a bankruptcy appellate panel hearing an appeal to award damages and costs for a frivolous appeal.

Rule 9011 (*Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers*) would be amended to conform to the 1993 amendments to Civil Rule 11, except that the Rule 11 “safe harbor” provision — which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion — does not apply if the challenged paper is a bankruptcy petition.

New Rule 9015 (*Jury Trials*) would provide procedures relating to jury trials in bankruptcy cases and proceedings, including procedures for consenting to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e), as added by the Bankruptcy Reform Act of 1994.

Rule 9035 (*Applicability of Rules in Judicial Districts in Alabama and North Carolina*) would be amended to clarify that the Bankruptcy Rules do not apply to the extent that they are inconsistent with any federal statutory provision relating to bankruptcy administrators in the districts of North Carolina and Alabama.

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

Recommendation: That the Judicial Conference approve proposed amendments to Bankruptcy Rules 1010, 1019, 2002, 2007.1, 3014, 3017, 3018, 3021, 8001, 8002, 9011, and 9035, and proposed new Rules 1020, 3017.1, 8020, and 9015 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-18 (Appendix A)
Rules
September 1996

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

FROM: Paul Mannes, Chair
 Advisory Committee on Bankruptcy Rules

DATE: May 13, 1996

RE: Report of the Advisory Committee on Bankruptcy Rules

Introduction

The Advisory Committee on Bankruptcy Rules met on March 21-22, 1996, in Memphis, Tennessee. The Committee considered public comments regarding the proposed amendments to the Bankruptcy Rules that were published in September, 1995. After making several changes, the Committee approved the proposed amendments for presentation to the Standing Committee for final approval. Following the meeting, the Committee added to the package of proposed amendments a technical amendment to Rule 1010 that was not published for comment.

At its March meeting, the Committee also approved a package of proposed amendments to the Official Bankruptcy Forms, and two new Official Bankruptcy Forms, for presentation to the Standing Committee with a request to publish them for comment.

I. Action Items

- A. Proposed Amendments to Bankruptcy Rules 1010, 1019, 2002, 2007.1, 3014, 3017, 3018, 3021, 8001, 8002, 9011, and 9035, and Proposed New Rules 1020, 3017.1, 8020, and 9015 Submitted for Approval by the Standing Committee and Transmittal to the Judicial Conference.

A preliminary draft of these proposed amendments (except for the proposed amendments to Rule 1010) were published for comment by the bench and bar in September 1995. Only five letters were received during the comment period. Comments were submitted by the following judges, lawyers, and organizations:

- (1) Hon. Geraldine Mund, United States Bankruptcy Judge, Central

District of California

(2) Hon. James E. Yacos, United States Bankruptcy Judge, District of New Hampshire

(3) James Gadsden, Esq., New York City, New York

(4) Anthony Michael Sabino, Esq., Chair of the Bankruptcy Section of the Federal Bar Association (submitting the Bankruptcy Section's comments)

(5) Joseph Patchan, Esq., Director of the Executive Office for United States Trustees

These comments are discussed below following the text of the relevant proposed amendments.

The public hearing on the preliminary draft of the proposed amendments, scheduled to be held in Washington, D.C., on February 9, 1996, was canceled for lack of witnesses.

The proposed amendments to Rule 1010, which were not published for comment, are technical and are necessary to conform to changes in subdivision designations in Civil Rule 4 and in Bankruptcy Rule 7004. The Advisory Committee requests that the amendments to Rule 1010 be approved and transmitted to the Judicial Conference without the need for publication. (Rule 4(d) of the Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure provides that "[the Standing Committee may eliminate the public notice and comment requirement if, in the case of a technical or conforming amendment, it determines that notice and comment are not appropriate or necessary.").

1. Synopsis of Proposed Amendments

(a) Rule 1010, which contains references to certain subdivisions of Civil Rule 4 and Bankruptcy Rule 7004, is amended solely to conform to the 1993 changes in subdivision designations in Civil Rule 4 and the 1996 changes in subdivision designations in Bankruptcy Rule 7004.

(b) Rule 1019(3) and (5) are amended to delete such phrases as "superseded case" and "original petition" because they give the erroneous impression that conversion of a case to a different chapter of the Bankruptcy Code results in a new case or a new petition for relief, and to make stylistic improvements.

(c) Rule 1020 is added to provide procedures and time limits for a small business to elect to be considered a small business in a chapter 11 case under § 1121(e) and 1125(f) of the Code as amended by the Bankruptcy Reform Act of 1994.

(d) Rule 2002(a) is amended to provide for notice of a meeting called for the purpose of electing a chapter 11 trustee under § 1104(b) of the Code as amended by the Bankruptcy Reform Act of 1994.

(e) Rule 2002(n) is amended, consistent with the 1994 amendment to § 342(c) of the Code, to provide for the inclusion of certain information in the caption of every notice required to be given by a debtor to a creditor.

(f) Rule 2007.1 is amended to provide procedures for the election of a chapter 11 trustee under § 1104(b) of the Code as amended by the Bankruptcy Reform Act of 1994.

(g) Rule 3014 is amended to provide a time limit for secured creditors to make an election under § 1111(b)(2) of the Code in a small business chapter 11 case.

(h) Rule 3017 is amended to give the court flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to receive a disclosure statement, ballot, and other materials in connection with the solicitation of votes on a plan.

(i) Rule 3017.1 is added to provide procedures, consistent with the Bankruptcy Reform Act of 1994, for the conditional and final approval of a disclosure statement in a small business chapter 11 case.

(j) Rule 3018 is amended to give the court flexibility in fixing the record date for the purpose of determining the holders of securities who may vote on a plan.

(k) Rule 3021 is amended (a) to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to receive distributions under a confirmed plan, (b) to treat the holders of debt securities the same as other creditors by requiring that their claims be allowed in order to receive a distribution, and (c) to clarify that all interest holders (not only those that are "equity security holders") may receive a distribution under a confirmed plan.

(l) Rule 8001(a) is amended to conform to the Bankruptcy Reform Act of 1994 which amended 28 U.S.C. § 158 to permit an appeal as of right from an

order extending or reducing the exclusivity period for filing a chapter 11 plan under § 1121.

(m) Rule 8001(e) is amended to provide a procedure for electing under 28 U.S.C. 158(c)(1), as amended by the Bankruptcy Reform Act of 1994, to have an appeal heard by the district court rather than by a bankruptcy appellate panel.

(n) Rule 8002(c) is amended (1) to provide that a request for an extension of time to appeal must be "filed" (rather than "made") within the applicable time period; (2) to give the court discretion -- more than 20 days after the expiration of the time to file a notice of appeal -- to order that a party may file a notice of appeal if the motion for an extension was timely and the notice of appeal is filed not later than ten days after entry of the order extending the time; and (3) to prohibit any extension of time to file a notice of appeal if the appeal is from certain types of orders.

(o) Rule 8020 is added to clarify that a district court hearing an appeal, or a bankruptcy appellate panel, may award damages and costs for a frivolous appeal.

(p) Rule 9011 is amended to conform to the 1993 amendments to Civil Rule 11, except that the safe harbor provision -- prohibiting the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion -- does not apply if the challenged paper is a bankruptcy petition.

(q) Rule 9015 is added to provide procedures relating to jury trials in bankruptcy cases and proceedings, including procedures for consenting to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) that was added by the Bankruptcy Reform Act of 1994.

(r) Rule 9035 is amended to clarify that the Bankruptcy Rules do not apply to the extent that they are inconsistent with any federal statutory provision relating to bankruptcy administrators in the judicial districts in North Carolina and Alabama.

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

**Rule 1010. Service of Involuntary Petition and
Summons; Petition Commencing Ancillary Case**

1 On the filing of an involuntary petition or a petition
2 commencing a case ancillary to a foreign proceeding the clerk
3 shall forthwith issue a summons for service. When an
4 involuntary petition is filed, service shall be made on the
5 debtor. When a petition commencing an ancillary case is
6 filed, service shall be made on the parties against whom relief
7 is sought pursuant to § 304(b) of the Code and on any other
8 parties as the court may direct. The summons shall be served
9 with a copy of the petition in the manner provided for service
10 of a summons and complaint by Rule 7004(a) or (b). If
11 service cannot be so made, the court may order that the
12 summons and petition be served by mailing copies to the
13 party's last known address, and by at least one publication in

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

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14 a manner and form directed by the court. The summons and
 15 petition may be served on the party anywhere. Rule ~~7004(f)~~
 16 7004(e) and Rule ~~4(g) and (h)~~ 4(l) F.R.Civ.P. apply when
 17 service is made or attempted under this rule.

COMMITTEE NOTE

The amendments to this rule are technical, are promulgated solely to conform to changes in subdivision designations in Rule 4, F.R.Civ.P., and in Rule 7004, and are not intended to effectuate any material change in substance.

In 1996, the letter designation of subdivision (f) of Rule 7004 (Summons; Time Limit for Service) was changed to subdivision (e). In 1993, the provisions of Rule 4, F.R.Civ.P., relating to proof of service contained in Rule 4(g) (Return) and Rule 4(h) (Amendments), were placed in the new subdivision (l) of Rule 4 (Proof of Service). The technical amendments to Rule 1010 are designed solely to conform to these new subdivision designations.

The 1996 amendments to Rule 7004 and the 1993 amendments to Rule 4, F.R.Civ.P., have not affected the availability of service by first class mail in accordance with Rule 7004(b) for the service of a summons and petition in an involuntary case commenced under § 303 or an ancillary case commenced under § 304 of the Code.

GAP Report on Rule 1010. These amendments, which are technical and conforming, were not published for comment.

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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

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

3 * * * * *

4 (3) CLAIMS FILED BEFORE CONVERSION IN
5 ~~SUPERSEDED CASES~~. All claims actually filed by a
6 creditor ~~in the superseded case~~ before conversion of the case
7 are shall be deemed filed in the chapter 7 case.

8 * * * * *

9 (5) FILING FINAL REPORT AND SCHEDULE
10 OF POSTPETITION DEBTS.

11 (A) Conversion of Chapter 11 or Chapter 12
12 Case. Unless the court directs otherwise, if a chapter
13 11 or chapter 12 case is converted to chapter 7, the
14 debtor in possession or, if the debtor is not a debtor in

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15 possession, the trustee serving at the time of
16 conversion, shall:

17 (i) not later than 15 days after
18 conversion of the case, file a schedule of
19 unpaid debts incurred after the filing of the
20 petition and before conversion of the case,
21 including the name and address of each holder
22 of a claim; and

23 (ii) not later than 30 days after
24 conversion of the case, file and transmit to the
25 United States trustee a final report and
26 account;

27 (B) Conversion of Chapter 13 Case. Unless
28 the court directs otherwise, if a chapter 13 case is
29 converted to chapter 7,

30 (i) the debtor, not later than 15 days
31 after conversion of the case, shall file a

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32 schedule of unpaid debts incurred after the
33 filing of the petition and before conversion of
34 the case, including the name and address of
35 each holder of a claim; and

36 (ii) the trustee, not later than 30 days
37 after conversion of the case, shall file and
38 transmit to the United States trustee a final
39 report and account;

40 (C) Conversion After Confirmation of a Plan.

41 Unless the court orders otherwise, if a chapter 11,
42 chapter 12, or chapter 13 case is converted to chapter
43 7 after confirmation of a plan, the debtor shall file:

44 (i) a schedule of property not listed in
45 the final report and account acquired after the
46 filing of the petition but before conversion,
47 except if the case is converted from chapter 13
48 to chapter 7 and § 348(f)(2) does not apply;

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49 (ii) a schedule of unpaid debts not
50 listed in the final report and account incurred
51 after confirmation but before the conversion;
52 and

53 (iii) a schedule of executory contracts
54 and unexpired leases entered into or assumed
55 after the filing of the petition but before
56 conversion.

57 (D) Transmission to United States Trustee.

58 The clerk shall forthwith transmit to the United States
59 trustee a copy of every schedule filed pursuant to Rule
60 1019(5).

61 ~~Unless the court directs otherwise, each debtor in possession~~
62 ~~or trustee in the superseded case shall: (A) within 15 days~~
63 ~~following the entry of the order of conversion of a chapter 11~~
64 ~~case, file a schedule of unpaid debts incurred after~~
65 ~~commencement of the superseded case including the name~~

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66 ~~and address of each creditor, and (B) within 30 days~~
67 ~~following the entry of the order of conversion of a chapter 11,~~
68 ~~chapter 12, or chapter 13 case, file and transmit to the United~~
69 ~~States trustee a final report and account. Within 15 days~~
70 ~~following the entry of the order of conversion, unless the~~
71 ~~court directs otherwise, a chapter 13 debtor shall file a~~
72 ~~schedule of unpaid debts incurred after the commencement of~~
73 ~~a chapter 13 case, and a chapter 12 debtor in possession or, if~~
74 ~~the chapter 12 debtor is not in possession, the trustee shall~~
75 ~~file a schedule of unpaid debts incurred after the~~
76 ~~commencement of a chapter 12 case. If the conversion order~~
77 ~~is entered after confirmation of a plan, the debtor shall file~~
78 ~~(A) a schedule of property not listed in the final report and~~
79 ~~account acquired after the filing of the original petition but~~
80 ~~before entry of the conversion order; (B) a schedule of unpaid~~
81 ~~debts not listed in the final report and account incurred after~~
82 ~~confirmation but before entry of the conversion order; and (C)~~

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83 ~~a schedule of executory contracts and unexpired leases~~
 84 ~~entered into or assumed after the filing of the original petition~~
 85 ~~but before entry of the conversion order. The clerk shall~~
 86 ~~forthwith transmit to the United States trustee a copy of every~~
 87 ~~schedule filed pursuant to this paragraph.~~

88 * * * * *

COMMITTEE NOTE

The amendments to subdivisions (3) and (5) are technical corrections and stylistic changes. The phrase "superseded case" is deleted because it creates the erroneous impression that conversion of a case results in a new case that is distinct from the original case. Similarly, the phrase "original petition" is deleted because it erroneously implies that there is a second petition with respect to a converted case. See § 348 of the Code.

GAP Report on Rule 1019. No changes to the published draft.

**Rule 1020. Election to be Considered a Small Business in
a Chapter 11 Reorganization Case**

1 In a chapter 11 reorganization case, a debtor that is a
 2 small business may elect to be considered a small business by

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- 3 filing a written statement of election not later than 60 days
 4 after the date of the order for relief.

COMMITTEE NOTE

This rule is designed to implement §§ 1121(e) and 1125(f) that were added to the Code by the Bankruptcy Reform Act of 1994.

GAP Report on Rule 1020. The phrase "or by a later date as the court, for cause, may fix" at the end of the published draft was deleted. The general provisions on reducing or extending time periods under Rule 9006 will be applicable.

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

- 1 (a) TWENTY-DAY NOTICES TO PARTIES IN
 2 INTEREST. Except as provided in subdivisions (h), (i), and
 3 (l) of this rule, the clerk, or some other person as the court
 4 may direct, shall give the debtor, the trustee, all creditors and
 5 indenture trustees at least ~~not less than 20 days'~~ days notice by
 6 mail of:

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7 (1) the meeting of creditors pursuant to under
 8 § 341 or § 1104(b) of the Code;

9 * * * * *

10 (n) CAPTION. The caption of every notice given
 11 under this rule shall comply with Rule 1005. The caption of
 12 every notice required to be given by the debtor to a creditor
 13 shall include the information required to be in the notice by
 14 § 342(c) of the Code.

15 * * * * *

COMMITTEE NOTE

Paragraph (a)(1) is amended to include notice of a meeting of creditors convened under § 1104(b) of the Code for the purpose of electing a trustee in a chapter 11 case. The court for cause shown may order the 20-day period reduced pursuant to Rule 9006(c)(1).

Subdivision (n) is amended to conform to the 1994 amendment to § 342 of the Code. As provided in § 342(c), the failure of a notice given by the debtor to a creditor to contain the information required by § 342(c) does not invalidate the legal effect of the notice.

GAP Report on Rule 2002. No changes to the published draft.

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**Rule 2007.1. Appointment of Trustee
or Examiner in a Chapter 11 Reorganization Case**

1 (a) ORDER TO APPOINT TRUSTEE OR
2 EXAMINER. In a chapter 11 reorganization case, a motion
3 for an order to appoint a trustee or an examiner ~~pursuant to~~
4 under § 1104(a) or § ~~1104(b)~~ 1104(c) of the Code shall be
5 made in accordance with Rule 9014.

6 (b) ELECTION OF TRUSTEE.

7 (1) Request for an Election. A request to
8 convene a meeting of creditors for the purpose of
9 electing a trustee in a chapter 11 reorganization case
10 shall be filed and transmitted to the United States
11 trustee in accordance with Rule 5005 within the time
12 prescribed by § 1104(b) of the Code. Pending court
13 approval of the person elected, any person appointed
14 by the United States trustee under § 1104(d) and

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15 approved in accordance with subdivision (c) of this
16 rule shall serve as trustee.

17 (2) Manner of Election and Notice. An
18 election of a trustee under § 1104(b) of the Code shall
19 be conducted in the manner provided in Rules
20 2003(b)(3) and 2006. Notice of the meeting of
21 creditors convened under § 1104(b) shall be given as
22 provided in Rule 2002. The United States trustee
23 shall preside at the meeting. A proxy for the purpose
24 of voting in the election may be solicited only by a
25 committee of creditors appointed under § 1102 of the
26 Code or by any other party entitled to solicit a proxy
27 pursuant to Rule 2006.

28 (3) Report of Election and Resolution of
29 Disputes.

30 (A) Report of Undisputed Election. If
31 the election is not disputed, the United States

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32 trustee shall promptly file a report of the
33 election, including the name and address of
34 the person elected and a statement that the
35 election is undisputed. The United States
36 trustee shall file with the report an application
37 for approval of the appointment in accordance
38 with subdivision (c) of this rule. The report
39 constitutes appointment of the elected person
40 to serve as trustee, subject to court approval,
41 as of the date of entry of the order approving
42 the appointment.

43 (B) *Disputed Election.* If the election
44 is disputed, the United States trustee shall
45 promptly file a report stating that the election
46 is disputed, informing the court of the nature
47 of the dispute, and listing the name and
48 address of any candidate elected under any

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49 alternative presented by the dispute. The
50 report shall be accompanied by a verified
51 statement by each candidate elected under
52 each alternative presented by the dispute,
53 setting forth the person's connections with the
54 debtor, creditors, any other party in interest,
55 their respective attorneys and accountants, the
56 United States trustee, and any person
57 employed in the office of the United States
58 trustee. Not later than the date on which the
59 report of the disputed election is filed, the
60 United States trustee shall mail a copy of the
61 report and each verified statement to any party
62 in interest that has made a request to convene
63 a meeting under § 1104(b) or to receive a copy
64 of the report, and to any committee appointed
65 under § 1102 of the Code. Unless a motion for

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66 the resolution of the dispute is filed not later
67 than 10 days after the United States trustee
68 files the report. any person appointed by the
69 United States trustee under § 1104(d) and
70 approved in accordance with subdivision (c)
71 of this rule shall serve as trustee. If a motion
72 for the resolution of the dispute is timely filed,
73 and the court determines the result of the
74 election and approves the person elected, the
75 report will constitute appointment of the
76 elected person as of the date of entry of the
77 order approving the appointment.

78 ~~(b)~~ (c) **APPROVAL OF APPOINTMENT.** An order
79 approving the appointment of a trustee elected under
80 § 1104(b) or appointed under § 1104(d), or the appointment
81 of an examiner pursuant to ~~§ 1104(c)~~ under § 1104(d) of the
82 Code, shall be made ~~only~~ on application of the United States

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83 trustee. The application shall state ~~stating~~ the name of the
84 person appointed, ~~the names of the parties in interest with~~
85 ~~whom the United States trustee consulted regarding the~~
86 ~~appointment~~, and, to the best of the applicant's knowledge, all
87 the person's connections with the debtor, creditors, any other
88 parties in interest, their respective attorneys and accountants,
89 the United States trustee, and persons employed in the office
90 of the United States trustee. Unless the person has been
91 elected under § 1104(b), the application shall state the names
92 of the parties in interest with whom the United States trustee
93 consulted regarding the appointment. The application shall be
94 accompanied by a verified statement of the person appointed
95 setting forth the person's connections with the debtor,
96 creditors, any other party in interest, their respective attorneys
97 and accountants, the United States trustee, and any person
98 employed in the office of the United States trustee.

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COMMITTEE NOTE

This rule is amended to implement the 1994 amendments to § 1104 of the Code regarding the election of a trustee in a chapter 11 case.

Eligibility for voting in an election for a chapter 11 trustee is determined in accordance with Rule 2003(b)(3). Creditors whose claims are deemed filed under § 1111(a) are treated for voting purposes as creditors who have filed proofs of claim.

Proxies for the purpose of voting in the election may be solicited only by a creditors' committee appointed under § 1102 or by any other party entitled to solicit proxies pursuant to Rule 2006. Therefore, a trustee or examiner who has served in the case, or a committee of equity security holders appointed under § 1102, may not solicit proxies.

The procedures for reporting disputes to the court derive from similar provisions in Rule 2003(d) applicable to chapter 7 cases. An election may be disputed by a party in interest or by the United States trustee. For example, if the United States trustee believes that the person elected is ineligible to serve as trustee because the person is not "disinterested," the United States trustee should file a report disputing the election.

The word "only" is deleted from subdivision (b), redesignated as subdivision (c), to avoid any negative inference with respect to the availability of procedures for obtaining review of the United States trustee's acts or failure to act pursuant to Rule 2020.

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GAP Report on Rule 2017.1. The published draft of proposed new subdivision (b)(3) of Rule 2017.1, and the Committee Note, was substantially revised to implement Mr. Patchan's recommendations (described above), to clarify how a disputed election will be reported, and to make stylistic improvements.

Rule 3014. Election Pursuant to Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or and Chapter 11 Reorganization Case Cases

1 An election of application of § 1111(b)(2) of the Code
 2 by a class of secured creditors in a chapter 9 or 11 case may
 3 be made at any time prior to the conclusion of the hearing on
 4 the disclosure statement or within such later time as the court
 5 may fix. If the disclosure statement is conditionally approved
 6 pursuant to Rule 3017.1, and a final hearing on the disclosure
 7 statement is not held, the election of application of
 8 § 1111(b)(2) may be made not later than the date fixed
 9 pursuant to Rule 3017.1(a)(2) or another date the court may
 10 fix. The election shall be in writing and signed unless made
 11 at the hearing on the disclosure statement. The election, if
 12 made by the majorities required by § 1111(b)(1)(A)(i), shall

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13 be binding on all members of the class with respect to the
 14 plan.

COMMITTEE NOTE

This amendment provides a deadline for electing application of § 1111(b)(2) in a small business case in which a conditionally approved disclosure statement is finally approved without a hearing.

GAP Report on Rule 3014. No changes to the published draft.

**Rule 3017. Court Consideration of Disclosure
 Statement in Chapter 9 Municipality and Chapter 11
 Reorganization Cases**

1 (a) HEARING ON DISCLOSURE STATEMENT
 2 AND OBJECTIONS ~~THERETO~~. Except as provided in Rule
 3 3017.1, after a disclosure statement is filed in accordance with
 4 Rule 3016(b) ~~Following the filing of a disclosure statement as~~
 5 ~~provided in Rule 3016(c)~~, the court shall hold a hearing on
 6 ~~not less than~~ at least 25 days ~~days~~' notice to the debtor,
 7 creditors, equity security holders and other parties in interest
 8 as provided in Rule 2002 to consider ~~such~~ the disclosure

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9 statement and any objections or modifications thereto. The
10 plan and the disclosure statement shall be mailed with the
11 notice of the hearing only to the debtor, any trustee or
12 committee appointed under the Code, the Securities and
13 Exchange Commission, and any party in interest who requests
14 in writing a copy of the statement or plan. Objections to the
15 disclosure statement shall be filed and served on the debtor,
16 the trustee, any committee appointed under the Code, and any
17 ~~such~~ other entity ~~as may be~~ designated by the court, at any
18 time before the disclosure statement is approved ~~prior to~~
19 ~~approval of the disclosure statement~~ or by ~~such~~ an earlier date
20 as the court may fix. In a chapter 11 reorganization case,
21 every notice, plan, disclosure statement, and objection
22 required to be served or mailed pursuant to this subdivision
23 shall be transmitted to the United States trustee within the
24 time provided in this subdivision.

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25 (b) DETERMINATION ON DISCLOSURE
26 STATEMENT. Following the hearing the court shall
27 determine whether the disclosure statement should be
28 approved.

29 (c) DATES FIXED FOR VOTING ON PLAN AND
30 CONFIRMATION. On or before approval of the disclosure
31 statement, the court shall fix a time within which the holders
32 of claims and interests may accept or reject the plan and may
33 fix a date for the hearing on confirmation.

34 (d) TRANSMISSION AND NOTICE TO UNITED
35 STATES TRUSTEE, CREDITORS, AND EQUITY
36 SECURITY HOLDERS. Upon ~~On~~ approval of a disclosure
37 statement, ~~unless~~ — except to the extent that the court orders
38 otherwise with respect to one or more unimpaired classes of
39 creditors or equity security holders; — the debtor in
40 possession, trustee, proponent of the plan, or clerk as ~~ordered~~
41 by the court orders shall mail to all creditors and equity

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42 security holders, and in a chapter 11 reorganization case shall
43 transmit to the United States trustee,

44 (1) the plan; or a ~~court-approved~~ court-approved
45 summary of the plan;

46 (2) the disclosure statement approved by the
47 court;

48 (3) notice of the time within which acceptances
49 and rejections of ~~such~~ the plan may be filed;
50 and

51 (4) any ~~such~~ other information as the court may
52 direct, including any court opinion ~~of the court~~
53 approving the disclosure statement or a ~~court~~
54 ~~approved~~ court-approved summary of the
55 opinion.

56 In addition, notice of the time fixed for filing objections and
57 the hearing on confirmation shall be mailed to all creditors
58 and equity security holders in accordance with ~~pursuant to~~

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59 Rule 2002(b), and a form of ballot conforming to the
60 appropriate Official Form shall be mailed to creditors and
61 equity security holders entitled to vote on the plan. ~~In the~~
62 ~~event~~ If the opinion of the court opinion is not transmitted or
63 only a summary of the plan is transmitted, the ~~opinion of the~~
64 court opinion or the plan shall be provided on request of a
65 party in interest at the plan proponent's expense ~~of the~~
66 ~~proponent of the plan~~. If the court orders that the disclosure
67 statement and the plan or a summary of the plan shall not be
68 mailed to any unimpaired class, notice that the class is
69 designated in the plan as unimpaired and notice of the name
70 and address of the person from whom the plan or summary of
71 the plan and disclosure statement may be obtained upon
72 request and at the plan proponent's expense ~~of the proponent~~
73 ~~of the plan~~, shall be mailed to members of the unimpaired
74 class together with the notice of the time fixed for filing
75 objections to and the hearing on confirmation. For the

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76 purposes of this subdivision, creditors and equity security
77 holders shall include holders of stock, bonds, debentures,
78 notes, and other securities of record on ~~at~~ the date the order
79 approving the disclosure statement ~~is~~ was entered or another
80 date fixed by the court, for cause, after notice and a hearing.

81 (e) TRANSMISSION TO BENEFICIAL HOLDERS
82 OF SECURITIES. At the hearing held pursuant to
83 subdivision (a) of this rule, the court shall consider the
84 procedures for transmitting the documents and information
85 required by subdivision (d) of this rule to beneficial holders
86 of stock, bonds, debentures, notes, and other securities, ~~and~~
87 determine the adequacy of ~~the~~ such procedures, and enter any
88 ~~such~~ orders ~~as~~ the court deems appropriate.

COMMITTEE NOTE

Subdivision (a) is amended to provide that it does not apply to the extent provided in new Rule 3017.1, which applies in small business cases.

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Subdivision (d) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to receive documents pursuant to this subdivision. For example, if there may be a delay between the oral announcement of the judge's order approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents.

The court may set a record date pursuant to subdivision (d) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes a record date pursuant to subdivision (d) with respect to the holders of securities, and the holders are impaired by the plan, the judge also should order that the same record date applies for the purpose of determining eligibility for voting pursuant to Rule 3018(a).

Other amendments to this rule are stylistic.

GAP Report on Rule 3017. No changes to the published draft.

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**Rule 3017.1. Court Consideration of
Disclosure Statement in a Small Business Case**

- . 1 (a) CONDITIONAL APPROVAL OF DISCLOSURE
2 STATEMENT. If the debtor is a small business and has
3 made a timely election to be considered a small business in a
4 chapter 11 case, the court may, on application of the plan
5 proponent, conditionally approve a disclosure statement filed
6 in accordance with Rule 3016(b). On or before conditional
7 approval of the disclosure statement, the court shall:
- 8 (1) fix a time within which the holders of
9 claims and interests may accept or reject the plan;
- 10 (2) fix a time for filing objections to the
11 disclosure statement;
- 12 (3) fix a date for the hearing on final approval
13 of the disclosure statement to be held if a timely
14 objection is filed; and
- 15 (4) fix a date for the hearing on confirmation.

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16 (b) APPLICATION OF RULE 3017. Rule 3017(a),
17 (b), (c), and (e) do not apply to a conditionally approved
18 disclosure statement. Rule 3017(d) applies to a conditionally
19 approved disclosure statement, except that conditional
20 approval is considered approval of the disclosure statement
21 for the purpose of applying Rule 3017(d).

22 (c) FINAL APPROVAL.

23 (1) Notice. Notice of the time fixed for filing
24 objections and the hearing to consider final approval
25 of the disclosure statement shall be given in
26 accordance with Rule 2002 and may be combined
27 with notice of the hearing on confirmation of the plan.

28 (2) Objections. Objections to the disclosure
29 statement shall be filed, transmitted to the United
30 States trustee, and served on the debtor, the trustee,
31 any committee appointed under the Code and any
32 other entity designated by the court at any time before

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33 final approval of the disclosure statement or by an34 earlier date as the court may fix.35 (3) *Hearing.* If a timely objection to the36 disclosure statement is filed, the court shall hold a37 hearing to consider final approval before or combined38 with the hearing on confirmation of the plan.

COMMITTEE NOTE

This rule is added to implement § 1125(f) that was added to the Code by the Bankruptcy Reform Act of 1994.

The procedures for electing to be considered a small business are set forth in Rule 1020. If the debtor is a small business and has elected to be considered a small business, § 1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.

GAP Report on Rule 3017.1. No change to the published draft.

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**Rule 3018. Acceptance or Rejection of Plan in a
Chapter 9 Municipality or a Chapter 11 Reorganization
Case**

1 (a) ENTITIES ENTITLED TO ACCEPT OR REJECT
2 PLAN; TIME FOR ACCEPTANCE OR REJECTION. A
3 plan may be accepted or rejected in accordance with § 1126
4 of the Code within the time fixed by the court pursuant to
5 Rule 3017. Subject to subdivision (b) of this rule, an equity
6 security holder or creditor whose claim is based on a security
7 of record shall not be entitled to accept or reject a plan unless
8 the equity security holder or creditor is the holder of record of
9 the security on the date the order approving the disclosure
10 statement is entered or on another date fixed by the court, for
11 cause, after notice and a hearing. For cause shown, the court
12 after notice and hearing may permit a creditor or equity
13 security holder to change or withdraw an acceptance or
14 rejection. Notwithstanding objection to a claim or interest,

Subdivision (a) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to vote on the plan. For example, if there may be a delay between the oral announcement of the judge's decision approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date for voting purposes so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents in connection with the solicitation of votes.

The court may set a record date pursuant to subdivision (a) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes the record date for voting purposes, the judge also should order that the same record date shall apply for the purpose of distributing the documents required to be distributed pursuant to Rule 3017(d).

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GAP Report on Rule 3018. No changes to the published draft.

Rule 3021. Distribution Under Plan

1 After confirmation of a plan, distribution shall be
2 made to creditors whose claims have been allowed, to interest
3 ~~holders of stock, bonds, debentures, notes, and other~~
4 ~~securities of record at the time of commencement of~~
5 ~~distribution whose claims or equity security~~ whose interests
6 have not been disallowed, and to indenture trustees who have
7 filed claims pursuant to Rule 3003(c)(5) ~~and which that~~ have
8 been allowed. For the purpose of this rule, creditors include
9 holders of bonds, debentures, notes, and other debt securities,
10 and interest holders include the holders of stock and other
11 equity securities, of record at the time of commencement of
12 distribution unless a different time is fixed by the plan or the
13 order confirming the plan.

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COMMITTEE NOTE

This rule is amended to provide flexibility in fixing the record date for the purpose of making distributions to holders of securities of record. In a large case, it may be impractical for the debtor to determine the holders of record with respect to publicly held securities and also to make distributions to those holders at the same time. Under this amendment, the plan or the order confirming the plan may fix a record date for distributions that is earlier than the date on which distributions commence.

This rule also is amended to treat holders of bonds, debentures, notes, and other debt securities the same as any other creditors by providing that they shall receive a distribution only if their claims have been allowed. Finally, the amendments clarify that distributions are to be made to all interest holders — not only those that are within the definition of "equity security holders" under § 101 of the Code — whose interests have not been disallowed.

GAP Report on Rule 3021. No changes to the published draft.

**Rule 8001. Manner of Taking Appeal;
Voluntary Dismissal**

- 1 (a) APPEAL AS OF RIGHT; HOW TAKEN. An
- 2 appeal from a ~~final~~ judgment, order, or decree of a
- 3 bankruptcy judge to a district court or bankruptcy appellate
- 4 panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be

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5 taken by filing a notice of appeal with the clerk within the
6 time allowed by Rule 8002. ~~An appellant's failure~~ Failure of
7 ~~an appellant~~ to take any step other than the timely filing of a
8 notice of appeal does not affect the validity of the appeal, but
9 is ground only for such action as the district court or
10 bankruptcy appellate panel deems appropriate, which may
11 include dismissal of the appeal. The notice of appeal shall (1)
12 conform substantially to the appropriate Official Form, (2)
13 ~~shall~~ contain the names of all parties to the judgment, order,
14 or decree appealed from and the names, addresses, and
15 telephone numbers of their respective attorneys, and (3) be
16 accompanied by the prescribed fee. Each appellant shall file
17 a sufficient number of copies of the notice of appeal to enable
18 the clerk to comply promptly with Rule 8004.

19 (b) APPEAL BY LEAVE; HOW TAKEN. An appeal
20 from an interlocutory judgment, order, or decree of a
21 bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall

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22 be taken by filing a notice of appeal, as prescribed in
23 subdivision (a) of this rule, accompanied by a motion for
24 leave to appeal prepared in accordance with Rule 8003 and
25 with proof of service in accordance with Rule 8008.

26 * * * * *

27 (e) ELECTION TO HAVE APPEAL HEARD BY
28 DISTRICT COURT INSTEAD OF BANKRUPTCY
29 APPELLATE PANEL. ~~CONSENT TO APPEAL TO~~
30 ~~BANKRUPTCY APPELLATE PANEL. Unless otherwise~~
31 ~~provided by a rule promulgated pursuant to Rule 8018;~~
32 ~~consent to have an appeal heard by a bankruptcy appellate~~
33 ~~panel may be given in a separate statement of consent~~
34 ~~executed by a party or contained in the notice of appeal or~~
35 ~~cross appeal. The statement of consent shall be filed before~~
36 ~~the transmittal of the record pursuant to Rule 8007(b), or~~
37 ~~within 30 days of the filing of the notice of appeal, whichever~~
38 ~~is later.~~ An election to have an appeal heard by the district

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39 court under 28 U.S.C. § 158(c)(1) may be made only by a
40 statement of election contained in a separate writing filed
41 within the time prescribed by 28 U.S.C. § 158(c)(1).

COMMITTEE NOTE

This rule is amended to conform to the Bankruptcy Reform Act of 1994 which amended 28 U.S.C. § 158. As amended, a party may — without obtaining leave of the court — appeal from an interlocutory order or decree of the bankruptcy court issued under § 1121(d) of the Code increasing or reducing the time periods referred to in § 1121.

Subdivision (e) is amended to provide the procedure for electing under 28 U.S.C. § 158(c)(1) to have an appeal heard by the district court instead of the bankruptcy appellate panel service. This subdivision is applicable only if a bankruptcy appellate panel service is authorized under 28 U.S.C. § 158(b) to hear the appeal.

GAP Report on Rule 8001. The heading of subdivision (e) is amended to clarify that it applies to the election to have an appeal heard by the district court instead of the BAP. The final paragraph of the Committee Note is revised to clarify that subdivision (e) is applicable only if a BAP is authorized to hear the appeal.

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**Rule 8002. Time for Filing Notice of
Appeal**

1 * * * * *

2 (c) EXTENSION OF TIME FOR APPEAL.

3 (1) The bankruptcy judge may extend the time
4 for filing the notice of appeal by any party ~~for a period~~
5 ~~not to exceed 20 days from the expiration of the time~~
6 ~~otherwise prescribed by this rule~~ , unless the
7 judgment, order, or decree appealed from:

8 (A) grants relief from an automatic
9 stay under § 362, § 922, § 1201, or § 1301;

10 (B) authorizes the sale or lease of
11 property or the use of cash collateral under
12 § 363;

13 (C) authorizes the obtaining of credit
14 under § 364;

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15 (D) authorizes the assumption or
16 assignment of an executory contract or
17 unexpired lease under § 365;

18 (E) approves a disclosure statement
19 under § 1125; or

20 (F) confirms a plan under § 943,
21 § 1129, § 1225, or § 1325 of the Code.

22 (2) A request to extend the time for filing a
23 notice of appeal must be made by written motion filed
24 before the time for filing a notice of appeal has
25 expired, except that such a motion filed not later
26 request made no more than 20 days after the
27 expiration of the time for filing a notice of appeal may
28 be granted upon a showing of excusable neglect if the
29 judgment or order appealed from does not authorize
30 the sale of any property or the obtaining of credit or
31 the incurring of debt under § 364 of the Code, or is

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32 ~~not a judgment or order approving a disclosure~~
33 ~~statement, confirming a plan, dismissing a case, or~~
34 ~~converting the case to a case under another chapter of~~
35 ~~the Code. An extension of time for filing a notice of~~
36 ~~appeal may not exceed 20 days from the expiration of~~
37 ~~the time for filing a notice of appeal otherwise~~
38 ~~prescribed by this rule or 10 days from the date of~~
39 ~~entry of the order granting the motion, whichever is~~
40 ~~later.~~

COMMITTEE NOTE

Subdivision (c) is amended to provide that a request for an extension of time to file a notice of appeal must be filed within the applicable time period. This amendment will avoid uncertainty as to whether the mailing of a motion or an oral request in court is sufficient to request an extension of time, and will enable the court and the parties in interest to determine solely from the court records whether a timely request for an extension has been made.

The amendments also give the court discretion to permit a party to file a notice of appeal more than 20 days after expiration of the time to appeal otherwise prescribed, but only if the motion was timely filed and the notice of appeal is filed within a period not exceeding 10 days after entry of the order extending the time. This

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amendment is designed to protect parties that file timely motions to extend the time to appeal from the harshness of the present rule as demonstrated in In re Mouradick, 13 F.3d 326 (9th Cir. 1994), where the court held that a notice of appeal filed within the 3-day period expressly prescribed by an order granting a timely motion for an extension of time did not confer jurisdiction on the appellate court because the notice of appeal was not filed within the 20-day period specified in subdivision (c).

The subdivision is amended further to prohibit any extension of time to file a notice of appeal — even if the motion for an extension is filed before the expiration of the original time to appeal — if the order appealed from grants relief from the automatic stay, authorizes the sale or lease of property, use of cash collateral, obtaining of credit, or assumption or assignment of an executory contract or unexpired lease under § 365, or approves a disclosure statement or confirms a plan. These types of orders are often relied upon immediately after they are entered and should not be reviewable on appeal after the expiration of the original appeal period under Rule 8002(a) and (b).

GAP Report on Rule 8002. No changes to the published draft.

**Rule 8020. Damages and Costs for
Frivolous Appeal**

- 1 If a district court or bankruptcy appellate panel
- 2 determines that an appeal from an order, judgment, or decree
- 3 of a bankruptcy judge is frivolous, it may, after a separately

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4 filed motion or notice from the district court or bankruptcy
 5 appellate panel and reasonable opportunity to respond, award
 6 just damages and single or double costs to the appellee.

COMMITTEE NOTE

This rule is added to clarify that a district court hearing an appeal, or a bankruptcy appellate panel, has the authority to award damages and costs to an appellee if it finds that the appeal is frivolous. By conforming to the language of Rule 38 F.R.App.P., this rule recognizes that the authority to award damages and costs in connection with frivolous appeals is the same for district courts sitting as appellate courts, bankruptcy appellate panels, and courts of appeals.

GAP Report on Rule 8020. No changes to the published draft.

**Rule 9011. Signing and of Papers; Representations to
the Court; Sanctions; Verification and Copies of Papers**

1 (a) SIGNATURE. Every petition, pleading, written
 2 motion, and other paper ~~served or filed in a case under the~~
 3 ~~Code on behalf of a party represented by an attorney~~, except
 4 a list, schedule, or statement, or amendments thereto, shall be
 5 signed by at least one attorney of record in the attorney's

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6 individual name. A party who is not represented by an
7 attorney shall sign all papers. , ~~whose office address and~~
8 ~~telephone number shall be stated.~~ ~~A party who is not~~
9 ~~represented by an attorney shall sign all papers and state the~~
10 ~~party's address and telephone number.~~ Each paper shall state
11 the signer's address and telephone number, if any. The
12 signature of an attorney or a party constitutes a certificate that
13 the attorney or party has read the document; that to the best of
14 the attorney's or party's knowledge, information, and belief
15 formed after reasonable inquiry it is well grounded in fact and
16 is warranted by existing law or a good faith argument for the
17 extension, modification, or reversal of existing law; and that
18 it is not interposed for any improper purpose, such as to
19 harass or to cause unnecessary delay or needless increase in
20 the cost of litigation or administration of the case. If a
21 document is not signed, it An unsigned paper shall be stricken
22 unless it is signed promptly after the omission of the signature

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23 is corrected promptly after being called to the attention of the
24 ~~person whose signature is required~~ attorney or party. If a
25 ~~document is signed in violation of this rule, the court on~~
26 ~~motion or on its own initiative, shall impose on the person~~
27 ~~who signed it, the represented party, or both, an appropriate~~
28 ~~sanction, which may include an order to pay to the other party~~
29 ~~or parties the amount of the reasonable expenses incurred~~
30 ~~because of the filing of the document, including a reasonable~~
31 ~~attorney's fee.~~

32 (b) REPRESENTATIONS TO THE COURT. By
33 presenting to the court (whether by signing, filing, submitting,
34 or later advocating) a petition, pleading, written motion, or
35 other paper, an attorney or unrepresented party is certifying
36 that to the best of the person's knowledge, information, and
37 belief, formed after an inquiry reasonable under the
38 circumstances, —

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39 (1) it is not being presented for any improper
40 purpose, such as to harass or to cause unnecessary
41 delay or needless increase in the cost of litigation;

42 (2) the claims, defenses, and other legal
43 contentions therein are warranted by existing law or
44 by a nonfrivolous argument for the extension,
45 modification, or reversal of existing law or the
46 establishment of new law;

47 (3) the allegations and other factual
48 contentions have evidentiary support or, if specifically
49 so identified, are likely to have evidentiary support
50 after a reasonable opportunity for further investigation
51 or discovery; and

52 (4) the denials of factual contentions are
53 warranted on the evidence or, if specifically so
54 identified, are reasonably based on a lack of
55 information or belief.

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56 (c) SANCTIONS. If, after notice and a reasonable
57 opportunity to respond, the court determines that subdivision
58 (b) has been violated, the court may, subject to the conditions
59 stated below, impose an appropriate sanction upon the
60 attorneys, law firms, or parties that have violated subdivision
61 (b) or are responsible for the violation.

62 (1) How Initiated.

63 (A) By Motion. A motion for
64 sanctions under this rule shall be made
65 separately from other motions or requests and
66 shall describe the specific conduct alleged to
67 violate subdivision (b). It shall be served as
68 provided in Rule 7004. The motion for
69 sanctions may not be filed with or presented to
70 the court unless, within 21 days after service
71 of the motion (or such other period as the
72 court may prescribe), the challenged paper,

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73 claim, defense, contention, allegation, or
74 denial is not withdrawn or appropriately
75 corrected, except that this limitation shall not
76 apply if the conduct alleged is the filing of a
77 petition in violation of subdivision (b). If
78 warranted, the court may award to the party
79 prevailing on the motion the reasonable
80 expenses and attorney's fees incurred in
81 presenting or opposing the motion. Absent
82 exceptional circumstances, a law firm shall be
83 held jointly responsible for violations
84 committed by its partners, associates, and
85 employees.

86 (B) *On Court's Initiative.* On its own
87 initiative, the court may enter an order
88 describing the specific conduct that appears to
89 violate subdivision (b) and directing an

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90 attorney, law firm, or party to show cause why
91 it has not violated subdivision (b) with respect
92 thereto.

93 (2) Nature of Sanction; Limitations. A
94 sanction imposed for violation of this rule shall be
95 limited to what is sufficient to deter repetition of such
96 conduct or comparable conduct by others similarly
97 situated. Subject to the limitations in subparagraphs
98 (A) and (B), the sanction may consist of, or include,
99 directives of a nonmonetary nature, an order to pay a
100 penalty into court, or, if imposed on motion and
101 warranted for effective deterrence, an order directing
102 payment to the movant of some or all of the
103 reasonable attorneys' fees and other expenses incurred
104 as a direct result of the violation.

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105 (A) Monetary sanctions may not be
106 awarded against a represented party for a
107 violation of subdivision (b)(2).

108 (B) Monetary sanctions may not be
109 awarded on the court's initiative unless the
110 court issues its order to show cause before a
111 voluntary dismissal or settlement of the claims
112 made by or against the party which is, or
113 whose attorneys are, to be sanctioned.

114 (3) Order. When imposing sanctions, the
115 court shall describe the conduct determined to
116 constitute a violation of this rule and explain the basis
117 for the sanction imposed.

118 (d) INAPPLICABILITY TO DISCOVERY.
119 Subdivisions (a) through (c) of this rule do not apply to
120 disclosures and discovery requests, responses, objections, and

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121 motions that are subject to the provisions of Rules 7026
 122 through 7037.

123 ~~(b)~~(e) VERIFICATION. Except as otherwise
 124 specifically provided by these rules, papers filed in a case
 125 under the Code need not be verified. Whenever verification
 126 is required by these rules, an unsworn declaration as provided
 127 in 28 U.S.C. § 1746 satisfies the requirement of verification.

128 ~~(c)~~(f) COPIES OF SIGNED OR VERIFIED PAPERS.

129 When these rules require copies of a signed or verified paper,
 130 it shall suffice if the original is signed or verified and the
 131 copies are conformed to the original.

COMMITTEE NOTE

This rule is amended to conform to the 1993 changes to F.R.Civ.P. 11. For an explanation of these amendments, see the advisory committee note to the 1993 amendments to F.R.Civ.P. 11.

The "safe harbor" provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the

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challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and a hearing.

GAP Report on Rule 9011. The proposed amendments to subdivision (a) were revised to clarify that a party not represented by an attorney must sign lists, schedules, and statements, as well as other papers that are filed.

Rule 9015. Jury Trials

- 1 (a) APPLICABILITY OF CERTAIN FEDERAL
- 2 RULES OF CIVIL PROCEDURE. Rules 38, 39, and 47-51
- 3 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to
- 4 jury trials, apply in cases and proceedings, except that a
- 5 demand made pursuant to Rule 38(b) F.R.Civ.P. shall be filed
- 6 in accordance with Rule 5005.
- 7 (b) CONSENT TO HAVE TRIAL CONDUCTED BY
- 8 BANKRUPTCY JUDGE. If the right to a jury trial applies,
- 9 a timely demand has been filed pursuant to Rule 38(b)

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10 F.R.Civ.P., and the bankruptcy judge has been specially
11 designated to conduct the jury trial, the parties may consent to
12 have a jury trial conducted by a bankruptcy judge under 28
13 U.S.C. § 157(e) by jointly or separately filing a statement of
14 consent within any applicable time limits specified by local
15 rule.

COMMITTEE NOTE

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

GAP Report on Rule 9015. No changes to the published draft.

**Rule 9035. Applicability of Rules in Judicial
Districts in Alabama and North Carolina**

1 In any case under the Code that is filed in or
2 transferred to a district in the State of Alabama or the State of
3 North Carolina and in which a United States trustee is not
4 authorized to act, these rules apply to the extent that they are

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- 5 not inconsistent with any federal statute ~~the provisions of title~~
6 ~~11 and title 28 of the United States Code~~ effective in the case.

COMMITTEE NOTE

Certain statutes that are not codified in title 11 or title 28 of the United States Code, such as § 105 of the Bankruptcy Reform Act of 1994, Pub. L. 103-394, 108 Stat. 4106, relate to bankruptcy administrators in the judicial districts of North Carolina and Alabama. This amendment makes it clear that the Bankruptcy Rules do not apply to the extent that they are inconsistent with these federal statutes.

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