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# AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

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## COMMUNICATION

FROM

## THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

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



APRIL 30, 2007.—Referred to the Committee on the Judiciary and ordered to be printed

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## LETTER OF SUBMITTAL

SUPREME COURT OF THE UNITED STATES,
*Washington, DC, April 30, 2007.*

Hon. NANCY PELOSI,
*Speaker of the House of Representatives,*
*Washington, DC*

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

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

Sincerely,

JOHN G. ROBERTS, JR.,
*Chief Justice.*

APR 30 2007

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, 7007.1, and new Rules 6003, 9005.1, and 9037.

[See infra., pp. ___ ___ ___.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2007, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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

# AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

## Rule 1014. Dismissal and Change of Venue

(a) DISMISSAL AND TRANSFER OF CASES.

(1) *Cases Filed in Proper District.*

If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

(2) *Cases Filed in Improper District.*

If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by

the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

* * * * *

**Rule 3007. Objections to Claims**

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.

(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

(1) they duplicate other claims;

(2) they have been filed in the wrong case;

(3) they have been amended by subsequently filed proofs of claim;

(4) they were not timely filed;

(5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;

(6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;

(7) they are interests, rather than claims; or

(8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.

(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall:

(1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;

(2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims;

(3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;

(4) state in the title the identity of the objector and the grounds for the objections;

(5) be numbered consecutively with other omnibus objections filed by the same objector; and

(6) contain objections to no more than 100 claims.

(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.

**Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements**

* * * * *

(b) USE OF CASH COLLATERAL.

(1) *Motion; Service.*

(A) Motion. A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including:

(i) the name of each entity with an interest in the cash collateral;

(ii) the purposes for the use of the cash collateral;

(iii) the material terms, including duration, of the use of the cash collateral; and

(iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.

(C) Service. The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors

included on the list filed under Rule 1007(d); and (3) any other entity that the court directs.

* * * * *

(c) OBTAINING CREDIT.

(1) *Motion; Service.*

(A) Motion. A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the

proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:

(i) a grant of priority or a lien on property of the estate under § 364(c) or (d);

(ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim;

(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

(iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay;

(v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;

(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;

(vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

(viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

(ix) the indemnification of any entity;

(x) a release, waiver, or limitation of any right under § 506(c); or

(xi) the granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

(C) Service. The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case

is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs.

* * * * *

(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT.

(1) *Motion; Service.*

(A) Motion. A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

(i) an agreement to provide adequate protection;

(ii) an agreement to prohibit or condition the use, sale, or lease of property;

(iii) an agreement to modify or terminate the stay provided for in § 362;

(iv) an agreement to use cash collateral; or

(v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material

provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision.

(C) Service. The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs.

* * * * *

**Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts**

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following:

(a) an application under Rule 2014;

(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; and

(c) a motion to assume or assign an executory contract or unexpired lease in accordance with § 365.

**Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease**

* * * * *

(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless: (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee; (2) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.

(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or

assign multiple executory contracts or unexpired leases that are not between the same parties shall:

(1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;

(2) list parties alphabetically and identify the corresponding contract or lease;

(3) specify the terms, including the curing of defaults, for each requested assumption or assignment;

(4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;

(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(6) be limited to no more than 100 executory contracts or unexpired leases.

(g) FINALITY OF DETERMINATION. The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.

**Rule 7007.1. Corporate Ownership Statement**

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(b) TIME FOR FILING. A party shall file the statement required under Rule 7007.1(a) with its first appearance, pleading, motion, response, or other request addressed to the court. A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose.

**Rule 9005.1. Constitutional Challenge to a Statute — Notice, Certification, and Intervention**

Rule 5.1 F. R. Civ. P. applies in cases under the Code.

**Rule 9037. Privacy Protection For Filings Made with the Court**

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding unless filed with a proof of claim;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by subdivision (c) of this rule; and

(6) a filing that is subject to § 110 of the Code.

(c) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction.

The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.

(d) PROTECTIVE ORDERS. For cause, the court may by order in a case under the Code:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate

identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) WAIVER OF PROTECTION OF IDENTIFIERS. An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
*Presiding*

JAMES C. DUFF
*Secretary*

December 21, 2006

MEMORANDUM

To: The Chief Justice of the United States and the Associate Justices of the Supreme Court

From: James C. Duff

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 1014, 3007, 4001, 6006, and 7007.1, and proposed new Rules 6003, 9005.1, and 9037 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2006 session. The Judicial Conference recommends that these amendments and new rules be approved by the Court and transmitted to the Congress pursuant to law.

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

Attachments

**EXCERPT FROM THE**
**REPORT OF THE JUDICIAL CONFERENCE**

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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

* * * * *

**Implementing E-Government Act**

The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules submitted proposed uniform language for an amendment to Appellate Rule 25, and for new Bankruptcy Rule 9037, new Civil Rule 5.2, and new Criminal Rule 49.1 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and new rules implement the privacy and security provisions of § 205 of the E-Government Act of 2002 (Pub. L. No. 107-347, as amended by Pub. L. No. 108-281), governing electronic filings in federal court. The amendments and rules were published for public comment for a six-month period. The scheduled public hearings were canceled because only one witness requested to testify. That witness testified at the Committee's January meeting with the chairs of the advisory committees present.

The proposed package of amendments and new rules is derived from the privacy policy adopted by the Judicial Conference in September 2001 to address concerns arising from public access to electronic case filings (JCUS-SEP/OCT 01, pp. 52-53). The Conference policy requires that documents in case files generally be made available electronically to the same extent that they are available at the courthouse, provided that certain "personal data identifiers" are redacted in the public file, including the first five digits of a social-security number, the name of a minor, and the date of a person's birth.

In accordance with the Act's call for uniformity, the proposed new rules are identical in many respects. For example, certain pre-existing records of administrative, agency, and state-court proceedings and pro se habeas corpus filings are exempted from the redaction requirement under each of the proposed rules. Under another uniform provision, a court may, for good cause, authorize redaction of information in addition to personal identifiers or limit a nonparty's remote electronic access to documents to safeguard privacy interests. Each proposed rule also permits the filer of a document to elect not to redact the filer's own personal-identifier information, waiving the rule's protections.

There are a few differences in the proposed rules to account for factors unique to each set of rules. Proposed Civil Rule 5.2 specifically limits remote access to social security and immigration electronic case filings. The Social Security Administration and Department of Justice asked the advisory committee to give special treatment to these cases due to the prevalence of sensitive information and the volume of filings. Remote electronic access by nonparties is limited in these cases to the docket and the written dispositions of the court unless the court orders otherwise. Proposed new Criminal Rule 49.1 permits the partial redaction of an individual's home address and an exemption from redaction for certain information needed for forfeitures. Additional filings are exempted from the redaction requirement, including arrest and search warrants, charging documents, and documents filed before the filing of a criminal charge. Proposed Bankruptcy Rule 9037 uses several different terms consistent with terms used in the Bankruptcy Code. It also requires disclosure of the full names of a debtor, even if a minor. New Appellate Rule 25(a)(5) would apply the privacy rule that had applied to the case below to govern in the case on appeal.

The Committee on Court Administration and Case Management raised a concern during the public-comment period that remote electronic access to an indictment might jeopardize the safety of the foreperson signing it. Under Criminal Rule 6(c), the foreperson must sign all indictments, and under Rule 6(f) an indictment must be returned in open court. No empirical data has been presented showing added risks to forepersons whose signatures on indictments have been publicly available. Such evidence as there is suggests that forepersons have not been subject to threat because the indictment has been part of the public case file. Nor is an easy practical administrative solution apparent to redact a foreperson's name from the record. For these reasons and because the advisory committee determined that redaction of the foreperson's name would raise sensitive policy questions about the public nature of criminal proceedings, the advisory committee decided that the issue requires further careful study. The advisory committee will undertake this study promptly. However, the advisory committee decided that the study should not delay proceeding with the proposed new rule. The Committee on Court Administration and Case Management approves of this approach to this issue.

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**FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and rules were circulated to the bench and bar for comment in August 2005. The scheduled public hearing on the proposed changes was canceled because no one asked to testify.

The proposed amendment to Rule 1014 is consistent with general case law and states explicitly that a court on its own motion may dismiss or transfer a case that had been initially filed in an improper district.

The proposed amendment to Rule 3007 prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. The amendment also allows a party to join a maximum of 100 claims in a single, omnibus objection. The amendment specifies the content and limits the nature of objections that may be joined in the single filing. It also establishes minimum standards intended to protect the claimants' due process rights.

The proposed amendment to Rule 4001 requires a movant to provide a proposed order granting relief, together with notice to interested parties, when requesting authority to use cash collateral, to obtain credit, or to obtain approval of agreements to provide adequate protection, modify, or terminate the stay, or to grant a senior or equal lien on property. The amendment requires the movant to include within the motion a statement not to exceed five pages that concisely describes the material provisions of the relief requested.

Proposed new Rule 6003 limits the granting of interim and final relief by the court during the first 20 days after commencement of a case. Absent a showing of immediate and irreparable harm, a court cannot grant relief during the first 20 days of a case on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate (other than a motion under Rule 4001), and motions to assume or assign executory contracts and unexpired leases. The proposed rule is designed to alleviate the acute time pressures present at the start of a case so that full and careful consideration can be given to matters that may have a fundamental and long-lasting impact on the case.

Rule 6006 would be amended to authorize a movant to file an omnibus motion rejecting, or under specific circumstances assuming or assigning, a maximum of 100 executory contracts or unexpired leases. The amendment establishes minimum standards intended to ensure the protection of the claimants' due process rights. Under the amendment, the trustee may assume, but not assign, multiple executory contracts and unexpired leases in the omnibus motion.

The proposed amendment to Rule 7007.1 clarifies that a party must file its corporate ownership statement with the first paper filed with the court in an adversary proceeding.

Proposed new Rule 9005.1 makes Civil Rule 5.1, dealing with notice requirements in cases involving a constitutional challenge of a statute, applicable to all contested matters and other proceedings in a bankruptcy case.

Proposed new Rule 9037 implements the E-Government Act and has been discussed above.

The Committee concurred with the recommendations of the advisory committee.

**Recommendation:** That the Judicial Conference approve the proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Bankruptcy Rules 6003, 9005.1, and 9037 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

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

DAVID F. LEVI
CHAIR

PETER G. McCABE
SECRETARY

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APPELLATE RULES

THOMAS S. ZILLY
BANKRUPTCY RULES

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CIVIL RULES

SUSAN C. BUCKLEW
CRIMINAL RULES

JERRY E. SMITH
EVIDENCE RULES

**TO:** **Honorable David F. Levi, Chair**
**Standing Committee on Rules of Practice and Procedure**

**FROM:** **Honorable Thomas S. Zilly, Chair**
**Advisory Committee on Bankruptcy Rules**

**DATE:** **May 24, 2006 (Revised June 30, 2006)**

**RE:** **Report of the Advisory Committee on Bankruptcy Rules**

## I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 8-10, 2006, in Chapel Hill, North Carolina. As a result of that meeting and other actions, the Advisory Committee recommends a series of Action Items to the Standing Committee. First, the Committee recommends that the Standing Committee finally approve and recommend to the Judicial Conference the rules set out in Part II.A.3 of this report.

* * * * *

The Advisory Committee considered public comments regarding the proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 that were published in August 2005. The Advisory Committee received a number of comments on the proposed amendments to the Rules, and the comments are summarized later in this report. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 9, 2006, the hearing was canceled. The Advisory Committee recommends that the proposed amendments and additions to the Bankruptcy Rules set out in Part II.A.3 be approved for transmittal to the Judicial Conference.

* * * * *

II. ACTION ITEMS

A. Proposed Amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

**The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the following amendments and new rules for submission to the Judicial Conference.**

1. *Public Comment and Hearing.*

The proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1 and new Rules 6003, 9005.1, and 9037 were published for comment in August 2005. A public hearing on the proposed amendments was scheduled for January 9, 2006, but there were no requests to appear at the hearing.

2. *Synopsis of Proposed Amendments.*

(a) Rule 1014 is amended to state explicitly that the court can order the change of venue of a case on its own motion.

(b) Rule 3007 is amended to prohibit a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. The rule is also amended to allow omnibus claims objections which can include up to 100 claims in a single filed objection to claims. The rule limits the nature of objections that may be joined in the single filing, and it also establishes minimum standards that are intended to ensure the protection of the due process rights of the claimants.

(c) Rule 4001 is amended to require movants seeking approval of agreements relating to the automatic stay, approval of certain other agreements, or authority to use cash collateral or obtain credit submit along with the motion a proposed order for the relief requested and to provide more extensive notice to parties in interest of the requested relief. The rule requires the movant to include within the motion a statement not to exceed five pages that concisely describes the material provisions of the relief requested.

(d) Rule 6003 is new. It sets limits on the granting of certain relief by the court during the first 20 days of a case. Absent a need to avoid immediate and irreparable harm, the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume or assign executory contracts and unexpired leases for the first 20 days of the case.

(e) Rule 6006 is amended to authorize omnibus motions to reject executory contracts and unexpired leases. It also authorizes omnibus motions to assume or assign multiple executory contracts and unexpired leases under specific circumstances. The rule establishes minimum standards that are intended to ensure the protection of the due process rights of the claimants.

(f) Rule 7007.1 is amended to provide that a party must file its corporate ownership statement with the first paper filed with the court in an adversary proceeding.

(g) Rule 9005.1 is new. It makes Rule 5.1 F. R. Civ. P. applicable to all contested matters and other proceedings within the bankruptcy case.

(h) Rule 9037 is new. It is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Consistent with amendments to the Federal Rules of Appellate, Civil and Criminal Procedure, this rule protects the privacy and security concerns that arise from the filing of documents, both electronically and in paper form, with the court.

3. *Text of Proposed Amendments to Rules 1014, 3007, 4001, 6003, 6006, 7007.1, 9005.1 and 9037.*

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

**Rule 1014. Dismissal and Change of Venue**

(a) DISMISSAL AND TRANSFER OF CASES.

(1) *Cases Filed in Proper District.*

If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case ~~may be transferred~~ to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

(2) *Cases Filed in Improper District.*

If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United

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

States trustee, and other entities as directed by the court, may dismiss the case or transfer it ~~the case may be dismissed or transferred~~ to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

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**COMMITTEE NOTE**

Courts have generally held that they have the authority to dismiss or transfer cases on their own motion. The amendment recognizes this authority and also provides that dismissal or transfer of the case may take place only after notice and a hearing.

Other amendments are stylistic.

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Changes Made After Publication:

No changes since publication.

**Rule 3007. Objections to Claims**

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing. ~~If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.~~

(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or

permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

(1) they duplicate other claims;

(2) they have been filed in the wrong case;

(3) they have been amended by subsequently filed proofs of claim;

(4) they were not timely filed;

(5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;

(6) they were presented in a form that does not comply with applicable rules, and the objection states that the

objector is unable to determine the validity of the claim because of the noncompliance;

(7) they are interests, rather than claims; or

(8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.

(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall:

(1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;

(2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims;

(3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;

(4) state in the title the identity of the objector and the grounds for the objections;

(5) be numbered consecutively with other omnibus objections filed by the same objector; and

(6) contain objections to no more than 100 claims.

(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.

**COMMITTEE NOTE**

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint, which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present a significant opportunity for the efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on. Titling the objections in this manner

should avoid confusion and aid in tracking the objections on the docket.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment. Moreover, use of an omnibus objection generally does not preclude the objecting party from raising a subsequent objection to the claim on other grounds. See Restatement (Second) of Judgments § 26(1)(d) (1982) (generally applicable rule barring multiple actions based on same transaction or series of transactions is overridden when a statutory scheme permits splitting of claims).

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Changes Made After Publication:

There were several changes made to the rule after its publication. The Advisory Committee declined to follow Mr. Sabino's suggestion, concluding that the rule as proposed includes sufficient flexibility, and that expanding the flexibility might lead to excessive deviation from the appropriate format for omnibus claims objections. The Advisory Committee also declined to follow Mr. Horsley's suggestion because the deadline for filing a proof of claim varies based on the nature of the creditor (governmental units have

different deadlines from other creditors) as well as on the chapter under which the case is pending. The Advisory Committee rejected Judge Grant's suggestion that a party proposing an omnibus claims objection be required to demonstrate some special cause to allow the joinder of the objections. The Advisory Committee concluded that the rule includes sufficient protections for claimants such that omnibus objections should be allowed without the need for a special showing by the claims objector that joinder is proper.

The Advisory Committee did accept several of Judge Grant's suggestions, and the rule was amended by deleting the grounds for objection to claims based on the filing of a superceding proof of claim under proposed subdivision (d)(3) and the transfer of claims under proposed subdivision (d)(4). Subdivision (d)(3) now permits objections to claims that have been amended by a subsequently filed proof of claim and the paragraphs within subdivision (d) have been renumbered to reflect the deletion. The Committee Note also no longer includes any reliance on § 502 (j) for the statement indicating that a subsequent claim objection can be filed to a claim that was previously included in an omnibus claim objection.

**Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements**

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(b) USE OF CASH COLLATERAL.

(1) *Motion; Service.*

(A) Motion. A motion for ~~authorization~~ authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order ~~served on any entity which has an interest in the cash collateral, on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.~~

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including:

(i)** the name of each entity with an interest in the cash collateral;

(ii) the purposes for the use of the cash collateral;

(iii) the material terms, including duration, of the use of the cash collateral; and

(iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.

(C) Service. The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9

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**Numbering changed from Arabic to Roman numerals consistent with formatting convention.

municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs.

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(c) OBTAINING CREDIT.

(1) *Motion; Service.*

(A) Motion. A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order ~~served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may~~

~~direct. The motion shall be accompanied by a copy of the agreement~~.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided

under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:

(i)*** a grant of priority or a lien on property of the estate under § 364(c) or (d);

(ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim;

(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

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***Numbering changed from Arabic to Roman numerals consistent with formatting conventions.

(iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay;

(v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;

(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;

(vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

(viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the

trustee, including any modification of the statute of limitations or other deadline to commence an action;

(ix) the indemnification of any entity;

(x) a release, waiver, or limitation of any right under § 506(c); or

(xi) the granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

(C) Service. The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs.

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(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT.

(1) *Motion; Service.*

(A) Motion. A motion for approval of ~~an agreement~~ any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

~~(A)~~ (i)**** an agreement to provide adequate protection; ;

~~(B)~~ (ii) an agreement to prohibit or condition the use, sale, or lease of property; ;

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****Numbering changed from Arabic to Roman numerals consistent with formatting convention.

~~(C)~~ (iii) an agreement to modify or terminate the stay provided for in § 362; ;

~~(D)~~ (iv) an agreement to use cash collateral; ; or

~~(E)~~ (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property. ~~shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by a copy of the agreement and a proposed form of order~~.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision.

(C) Service. The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list

filed under Rule 1007(d); and (2) on any other entity the court directs.

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## COMMITTEE NOTE

The rule is amended to require that parties seeking authority to use cash collateral, to obtain credit, and to obtain approval of agreements to provide adequate protection, modify or terminate the stay, or to grant a senior or equal lien on property, submit with those requests a proposed order granting the relief, and that they provide more extensive notice to interested parties of a number of specified terms. The motion must either not exceed five pages in length, or, if it is longer, begin with a concise statement of five pages or less, that summarizes or lists the material provisions and which will assist the court and interested parties in understanding the nature of the relief requested. The concise statement must also set out the location within the documents of the summarized or listed provisions. The parties to agreements and lending offers frequently have concise summaries of their transactions that contain a list of the material provisions of the agreements, even if the agreements themselves are very lengthy. A similar summary should allow the court and interested parties to understand the relief requested.

In addition to the concise statement, the rule requires that motions under subdivisions (c) and (d) state whether the movant is seeking approval of any of the provisions listed in subdivision (c)(1)(B), and where those provisions are located in the documents. The rule is intended to enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule also provides that any motion for authority to obtain credit must identify any provision listed in subdivision (c)(1)(B)(i)-(xi) that is proposed to remain effective if the court grants the motion on an interim basis under Rule 4001(c)(2), but later denies final relief.

Other amendments are stylistic.

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Changes Made After Publication:

1. The introductory language in subdivisions (b)(1)(B), (c)(1)(B), and (d)(1)(B) was revised to clarify that the motions filed under the rule can be either no more than five pages long or begin with a concise statement of that length. This permits the continued use of forms that have been effective in smaller cases. Subdivision (c)(1)(B) also is amended to require that the motion identify any provisionally approved term that would remain in effect even if the court denies the permanent relief requested.

2. A new subparagraph (c)(1)(B)(vi) was inserted into the rule and the remaining subparagraphs were renumbered accordingly. The new subparagraph requires that the motion identify any provisions setting deadlines for filing and confirming reorganization plans and disclosure statements.

3. Subdivisions (c)(1)(C) and (d)(1)(C) of the proposed rule were deleted as unnecessary. The court has whatever authority Rule 9024 provides, and making an explicit reference to that rule in these subdivisions brings unnecessary

attention to Rule 9024 and could create a different standard of review under that rule than would apply in other instances. The Advisory Committee did not intend either consequence, so the subdivisions were deleted.

4. Subdivision (d)(1)(A) was restyled to form a vertical list of the motions subject to that provision.

**Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts**

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following:

(a) an application under Rule 2014;

(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; and

(c) a motion to assume or assign an executory contract or unexpired lease in accordance with § 365.

## COMMITTEE NOTE

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include substantial amounts of materials for the court and parties in interest to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume or assign executory contracts and unexpired leases for the first 20 days of the case, unless granting relief is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.

This rule does not govern motions and applications made more than 20 days after the filing of the petition.

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Changes After Publication:

Subdivision (c) was amended by deleting the reference to the rejection of executory contracts or unexpired leases. The rule, as revised, now limits only the assumption or assignment of executory contracts or unexpired leases in that subdivision.

**Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease**

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(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless: (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee; (2) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to

reject multiple executory contracts or unexpired leases in one motion.

(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall:

(1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;

(2) list parties alphabetically and identify the corresponding contract or lease;

(3) specify the terms, including the curing of defaults, for each requested assumption or assignment;

(4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;

(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(6) be limited to no more than 100 executory contracts or unexpired leases.

(g) FINALITY OF DETERMINATION. The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.

**COMMITTEE NOTE**

The rule is amended to authorize the use of omnibus motions to reject multiple executory contracts and unexpired leases. In some cases there may be numerous executory contracts and unexpired leases, and this rule permits the combining of up to one hundred of these contracts and leases in a single motion to initiate the contested matter.

The rule also is amended to authorize the use of a single motion to assume or assign executory contracts and unexpired leases (i) when such contracts and leases are with a single nondebtor party, (ii) when such contracts and leases are being assigned to the same

assignee, (iii) when the trustee proposes to assume, but not assign to more than one assignee, real property leases, or (iv) the court authorizes the filing of a joint motion to assume or to assume and assign executory contracts and unexpired leases under other circumstances that are not specifically recognized in the rule.

An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure that the nondebtor parties to the contracts and leases receive effective notice of the motion. Among those requirements is the requirement in subdivision (f)(5) that these motions be consecutively numbered (*e.g.*, Debtor in Possession's First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, Debtor in Possession's Second Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, etc.). There may be a need for several of these motions in a particular case. Numbering the motions consecutively is essential to keep track of these motions on the court's docket and should avoid confusion that might otherwise result from similar or identically-titled motions.

Subdivision (g) of the rule provides that the finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other contracts or leases included in the omnibus motion to obtain appellate review of the order. The rule permits the listing of multiple contracts or leases for convenience, and that convenience should not impede timely review of the court's decision with respect to each contract or lease.

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Changes After Publication:

Subdivision (e) of the proposed rule was amended as suggested by the NBC to insert a third category of requests that the trustee may make under an omnibus motion. The list of categories was numbered, and the new category is set out in (e)(2).

**Rule 7007.1. Corporate Ownership Statement**

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(b) TIME FOR FILING. A party shall file the statement required under Rule 7007.1(a) with its first ~~pleading in an adversary proceeding~~ appearance, pleading, motion, response, or other request addressed to the court. A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose.

**COMMITTEE NOTE**

The rule is amended to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The party's initial filing may be a

document that is not a "pleading" as defined in Rule 7 F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7007. The amendment also brings Rule 7007.1 more closely in line with Rule 7.1 F. R. Civ. P.

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Changes After Publication:

No changes were made after publication.

**Rule 9005.1. Constitutional Challenge to a Statute — Notice, Certification, and Intervention**

Rule 5.1 F. R. Civ. P. applies in cases under the Code.

**COMMITTEE NOTE**

The rule is added to adopt the new rule added to the Federal Rules of Civil Procedure. The new Civil Rule replaces Rule 24(c) F. R. Civ. P., so the cross reference to Civil Rule 24 contained in Rule 7024 is no longer sufficient to bring the provisions of new Civil Rule 5.1 into adversary proceedings. This rule also makes Civil Rule 5.1 applicable to all contested matters and other proceedings within the bankruptcy case.

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Changes After Publication:

No changes were made after publication.

**Rule 9037. Privacy Protection For Filings Made with the Court**

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding unless filed with a proof of claim;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by subdivision (c) of this rule; and

(6) a filing that is subject to § 110 of the Code.

(c) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The

court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.

(d) PROTECTIVE ORDERS. For cause, the court may by order in a case under the Code:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any

reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) WAIVER OF PROTECTION OF IDENTIFIERS. An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.

**COMMITTEE NOTE**

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form, but the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* http://www.privacy.uscourts.gov/Policy.htm. The Judicial Conference policy is that documents in case files generally should be made

available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social-security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver's license numbers and alien registration numbers — in a particular case. In such cases, protection may be sought under subdivision (c) or (d). Moreover, the rule does not affect the protection available under other rules, such as Rules 16 and 26(c) of the Federal Rules of Civil Procedure, or under other sources of protective authority.

Any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should therefore notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

An individual debtor's full social-security number or taxpayer-identification number is included on the notice of the § 341 meeting of creditors sent to creditors. Of course, that is not filed with the court, see Rule 1007(f) (the debtor "submits" this information), and the copy of the notice that is filed with the court does not include the full social-security number or taxpayer-identification number. Thus, since the full social-security number or taxpayer-identification number is not filed with the court, it is not available to a person searching that record.

The clerk is not required to review documents filed with the court for compliance with this rule. As subdivision (a) recognizes, the responsibility to redact filings rests with counsel, parties, and others who make filings with the court.

Subdivision (d) recognizes the court's inherent authority to issue a protective order to prevent remote access to private or sensitive information and to require redaction of material in addition to that which would be redacted under subdivision (a) of the rule. These orders may be issued whenever necessary either by the court on its own motion, or on motion of a party in interest.

Subdivision (e) allows an entity that makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (f) allows the option to file a reference list of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (f) of the rule refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (g) allows an entity to waive the protections of the rule as to that entity's own information by filing it in unredacted form. An entity may elect to waive the protection if, for example, it is determined that the costs of redaction outweigh the benefits to privacy. As to financial account numbers, the instructions to Schedules E and F of Official Form 6 note that the debtor may elect to include the complete account number on those schedules rather than limit the number to the final four digits. Including the complete

number would operate as a waiver by the debtor under subdivision (g) as to the full information that the debtor set out on those schedules. The waiver operates only to the extent of the information that the entity filed without redaction. If an entity files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 9037 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with this rule if and when they are filed as part of an appeal or for other reasons.

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Changes After Publication:

Rule 9037 is intended to parallel as closely as possible Civil Rule 5.2 and Criminal Rule 49.1. The Advisory Committees have worked together to maintain as much consistency as possible in the three versions of the rule. The rule has been revised to implement the several style revisions suggested by the Style Subcommittee of the Standing Committee. Subdivision (b) was reorganized and renumbered. Subdivisions (b)(1) and (b)(3) were added in response to suggestions by the Department of Justice. Subdivision (b)(4), formerly subdivision (b)(2), was amended in response to the suggestion of the Committee on Court Administration and Case Management so that the subdivision now refers to court records that become a part of the record in the pending matter. The term "entity" has been substituted for "person" in subdivision (c) and for "party" in subdivisions (e) and (f) to conform the rule to the definitions provided in the Bankruptcy Code.

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