

AMENDMENTS TO THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT  
OF THE UNITED STATES

TRANSMITTING

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



MAY 24, 2011.—Referred to the Committee on the Judiciary and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE



SUPREME COURT OF THE UNITED STATES,  
*Washington, DC, April 26, 2011.*

Hon. JOHN A. BOEHNER,  
*Speaker of the House of Representatives,*  
*Washington, DC.*

DEAR MR. 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.*

April 26, 2011

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 2003, 2019, 3001, 4004, and 6003, and new Rules 1004.2 and 3002.1.

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

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2011, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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

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

**Rule 1004.2. Petition in Chapter 15 Cases**

(a) DESIGNATING CENTER OF MAIN INTERESTS. A petition for recognition of a foreign proceeding under chapter 15 of the Code shall state the country where the debtor has its center of main interests. The petition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending.

(b) CHALLENGING DESIGNATION. The United States trustee or a party in interest may file a motion for a determination that the debtor's center of main interests is other than as stated in the petition for recognition commencing the chapter 15 case. Unless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition.

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The motion shall be transmitted to the United States trustee and served on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor was a party as of the time the petition was filed, and such other entities as the court may direct.

**Rule 2003. Meeting of Creditors or Equity Security Holders**

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(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time. The presiding official shall promptly file a statement specifying the date and time to which the meeting is adjourned.

\* \* \* \* \*

**Rule 2019. Disclosure Regarding Creditors and  
Equity Security Holders in Chapter 9 and Chapter  
11 Cases**

(a) **DEFINITIONS.** In this rule the following terms have the meanings indicated:

(1) “Disclosable economic interest” means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.

(2) “Represent” or “represents” means to take a position before the court or to solicit votes regarding the confirmation of a plan on behalf of another.

(b) **DISCLOSURE BY GROUPS, COMMITTEES,  
AND ENTITIES.**

(1) In a chapter 9 or 11 case, a verified statement setting forth the information specified in

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subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.

(2) Unless the court orders otherwise, an entity is not required to file the verified statement described in paragraph (1) of this subdivision solely because of its status as:

- (A) an indenture trustee;
- (B) an agent for one or more other entities under an agreement for the extension of credit;
- (C) a class action representative; or
- (D) a governmental unit that is not a person.

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(c) INFORMATION REQUIRED. The verified statement shall include:

(1) the pertinent facts and circumstances concerning:

(A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or

(B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged;

(2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:

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- (A) name and address;
- (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and
- (C) with respect to each member of a group or committee that claims to represent any entity in addition to the members of the group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed;

- (3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee, other than a committee appointed under § 1102 or § 1114 of the Code:

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 7

(A) name and address; and

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and

(4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.

(d) SUPPLEMENTAL STATEMENTS. If any fact disclosed in its most recently filed statement has changed materially, an entity, group, or committee shall file a verified supplemental statement whenever it takes a position before the court or solicits votes on the confirmation of a plan. The supplemental statement shall set forth the material changes in the facts required by subdivision (c) to be disclosed.

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(e) DETERMINATION OF FAILURE TO COMPLY;  
SANCTIONS.

(1) On motion of any party in interest, or on its own motion, the court may determine whether there has been a failure to comply with any provision of this rule.

(2) If the court finds such a failure to comply, it may:

(A) refuse to permit the entity, group, or committee to be heard or to intervene in the case;

(B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or

(C) grant other appropriate relief.

**Rule 3001. Proof of Claim**

\* \* \* \* \*

## (c) SUPPORTING INFORMATION.

(1) *Claim Based on a Writing.* When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

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(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

\* \* \* \* \*

**Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence**

(a) IN GENERAL. This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan.

(b) NOTICE OF PAYMENT CHANGES. The holder of the claim shall file and serve on the debtor, debtor's

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counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

(c) NOTICE OF FEES, EXPENSES, AND CHARGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

(d) FORM AND CONTENT. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form,

and filed as a supplement to the holder's proof of claim.

The notice is not subject to Rule 3001(f).

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also

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inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The

statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case,

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unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

**Rule 4004. Grant or Denial of Discharge**

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**(b) EXTENSION OF TIME.**

(1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.

(2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge,

would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

\* \* \* \* \*

**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 21 days after the filing of the petition, issue an order granting 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

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motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; or

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



## JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

December 16, 2010

## MEMORANDUM

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

From: James C. Duff *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 2003, 2019, 3001, 4004, and 6003, and new Rules 1004.2 and 3002.1 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2010 session. The Judicial Conference recommends that the 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:

\* \* \* \* \*

**FEDERAL RULES OF BANKRUPTCY PROCEDURE**

*Rules Recommended for Approval and Transmission*

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2003, 2019, 3001, 4004, and 6003, new Rules 1004.2 and 3002.1, and proposed revisions to Official Forms 9A, 9C, 9I, 20A, 20B, 22A, 22B, and 22C, with a recommendation that they be approved and transmitted to the Judicial Conference. Except as noted below, the proposed changes were circulated to the bench and bar for comment in August 2009. Fifteen witnesses appeared at a public hearing conducted on February 5, 2010, in New York. The other scheduled public hearing on the proposed changes was cancelled because the one witness who asked to testify at the hearing agreed to do so by telephone. The advisory committee considered more than 150 written comments on the proposed amendments.

*Rule 1004.2*

Proposed new Rule 1004.2 requires that a petition for recognition of a foreign proceeding under new chapter 15 of the Bankruptcy Code identify the countries where a foreign proceeding is pending against the same debtor and the country where the debtor has its “center of main interests.” The rule sets out applicable notice provisions and generally requires that a challenge to the debtor’s designation of the center of main interests be raised at least seven days before the hearing on the petition for recognition. The proposed new rule was published in August 2008 and republished with a revision in August 2009. As revised, the deadline to file a motion

challenging the debtor's designation was changed from "60 days after the notice of the petition has been given" to no later than seven days before the petition hearing. No comments were submitted following republication.

*Rule 2003(e)*

The proposed amendments to Rule 2003(e) require a presiding official who "adjourns" a meeting of creditors to file a statement specifying the date and time to which the meeting is adjourned. The requirement ensures that the record clearly reflects whether the meeting of creditors was concluded or extended to another day. The Committee Note makes clear that an adjournment to a specific date is the equivalent of holding the meeting "open" for purposes of § 1308(b) of the Bankruptcy Code. Under 11 U.S.C. § 1308(a), a chapter 13 debtor is required to file certain tax returns "[n]ot later than the day before the date on which the meeting of creditors is first scheduled to be held." Under § 1307(e), the debtor's failure to file the required tax returns is a basis for dismissal or conversion of the chapter 13 case. Section 1308(b), however, provides that if the debtor has not filed the required tax returns by the date on which the meeting of creditors is first scheduled, the trustee may "hold open that meeting for a reasonable period of time" — not to exceed 120 days for a return that is past due as of the date the petition is filed — which gives the debtor additional time to file the required return.

Eight of the nine comments submitted on the proposed amendments expressed support. The Office of Chief Counsel of the IRS recommended revising the proposed amendments to require the official presiding at the meeting of creditors to specify whether the meeting is being "held open" to allow a taxpayer additional time to file a tax return, or whether the meeting is being "adjourned" for some other purpose. The advisory committee concluded that requiring the trustee to make this distinction expressly and on the record in every case would subject chapter

13 cases to conversion or dismissal merely because the trustee failed to make the necessary statement or unintentionally used the wrong words in adjourning a meeting of creditors. Instead, the advisory committee concluded that it would be simpler and less confusing, and would avoid an unnecessary trap for debtors, to treat a meeting that is “adjourned” to a specific date as “held open” under § 1308(b) and as allowing the debtor additional time to file a tax return. There is no risk that this would create an indefinite extension because the additional time for filing tax returns is limited by statute.

*Rule 2019*

The proposed amendments to Rule 2019, which applies in chapter 9 and chapter 11 proceedings, expand disclosure requirements to facilitate openness and transparency by revealing potentially divergent economic interests within groups of creditors or equity security holders and on the part of putative representatives of other stakeholders. The proposed amendments require committees, groups, or entities that consist of or represent creditors or equity security holders who are acting in concert to identify their “disclosable economic interests” relating to the debtor. This term is broadly defined in subdivision (a) to include economic rights and interests that are affected by the value, acquisition, or disposition of a claim or interest. The amendments require every such group or committee to provide a verified statement of, among other things, the nature and amount of each disclosable economic interest relating to the debtor. In addition, each member of an unofficial group or committee that claims to represent any entity in addition to the members of the group or committee must disclose the acquisition date of each disclosable interest by quarter and year, unless the interest was acquired more than a year before the bankruptcy petition was filed. Such information is important to evaluate positions taken by these groups and entities. For example, it is important to know that members of a committee

purporting to represent the debtor's bond holders also hold a derivative position the value of which is inverse to that of the bonds.

The overwhelming majority of individuals and groups commenting on the published proposed amendments supported a clarified and reinvigorated Rule 2019. During the public comment period, the advisory committee heard concerns from some distressed-debt investors about the potential impact of the proposed rule on certain proprietary business information and about the breadth of the proposed rule's enforcement provision. The advisory committee revised the published amendments in several important respects to address these concerns.

As published, the amendments would have required disclosure of the precise date when each disclosable economic interest was acquired (if not more than one year before the filing of the petition) and, if directed by the court, the amount paid for each disclosable economic interest. The proposed disclosure obligations would have applied to each covered entity, indenture trustee, or member of a group or committee, and to each creditor or equity security holder represented by a covered entity, indenture trustee, or committee or group (other than an official committee). During the public comment period, the advisory committee was informed that pricing information is highly guarded by distressed-debt purchasers who fear that its disclosure could give industry participants unfair insight into competitors' trading strategies. Though the published amendments had taken the conservative approach of requiring automatic disclosure only of the acquisition date and insisting on a court order to obtain price information, the advisory committee was persuaded by the public comments that this approach was still too broad. The combination of market volatility and publicly available price data means that requiring disclosure of the date of purchase would as a practical matter reveal the acquisition price, even if the court did not order disclosure. Effectively requiring pricing information disclosed in every

case could discourage investors from purchasing distressed debt, which would be counterproductive.

After careful consideration, the advisory committee made several changes to the published rule. The advisory committee eliminated the provision specifically authorizing a court to order the disclosure of the amount paid for a disclosable economic interest. In addition, the acquisition-date disclosure provision was modified to require disclosure only by quarter and year. The information that was eliminated is not necessary to accomplish the primary purpose of the amendments. As revised, the proposed amendments require the disclosure of enough information to reveal potential conflicts of interest. If more specific information is important in an individual case, disclosure could be obtained through discovery or ordered pursuant to the court's existing authority.

The advisory committee also added language in subdivision (b)(1) limiting the covered groups, committees, and entities to those that represent or consist of multiple creditors or equity security holders acting in concert to advance their common interests. This revision clarifies that groups composed entirely of affiliates or insiders of one another are not subject to Rule 2019's disclosure requirements.

The advisory committee also added a definition of "represent" or "represents" in subdivision (a)(2) that limits the application of the rule to groups, committees, and entities taking a position before the court or soliciting votes on a plan. This revision excludes from the rule those whose involvement in a case is merely passive. The revision addresses concerns expressed during the public comment period that the rule's disclosure requirements should not be triggered when, for example, a law firm represents more than one client with respect to a chapter 11 case but does not appear in court to seek or oppose relief on behalf of more than one of those clients.

There is no reason to require an entity that remains passive in the case to publicly disclose its holdings merely because it retained a firm that happens to represent one or more other creditors or equity security holders.

For similar reasons, the advisory committee eliminated the provision in subdivision (b) of the published amendments that authorized a court to require disclosure by an entity that does not represent anyone else. The advisory committee also added subdivision (b)(2), which excludes certain entities — including indenture trustees and class action representatives — from the rule's disclosure requirements unless the court orders otherwise.

Finally, the published enforcement provisions that authorized the court to determine failures to comply with legal requirements regulating the activities and personnel of an entity, group, or committee were deleted, limiting the scope of the enforcement provision to failures to comply with the rule itself.

*Rule 3001*

The proposed amendments to Rule 3001 require creditors to provide additional information supporting certain proofs of claim and impose penalties if creditors fail to comply with the new disclosure requirements. The amendments proposed for Judicial Conference approval were revised after publication to refer to an official form that will be prepared to facilitate reporting certain of the disclosure items. Other revisions limit the amended rule's sanctions provision. Provisions of the published rule that imposed certain disclosure requirements in connection with claims based on open-end or revolving credit arrangements have been revised more extensively and, as explained below, will be republished in August 2010 for further public comment.

As revised, the proposed amendments presented for Judicial Conference consideration continue and clarify the long-established disclosure requirement that a creditor presenting a claim in an individual-debtor case provide an itemized statement of the interest, fees, expenses, and other charges incurred before the petition was filed. Special disclosure requirements apply under the amendments if the claim is secured by a security interest in the individual debtor's property. In such a case, a statement of the amount necessary to cure any prepetition default and, for home mortgages, a statement of any escrow account must also be provided.

The proposed amendments, modified after public comment, also strengthen the penalties for failing to comply with the Rule 3001 requirements. The provision published for comment generally mandated sanctions for creditors who failed to provide the required information, including prohibiting the creditor from presenting any of the omitted information as evidence in a contested matter or adversary proceeding in the case, unless the court determined that the failure was substantially justified or harmless. The penalty provision is based on Civil Rule 37, which prohibits a party from using information "to supply evidence on a motion, at a hearing, or at a trial" that it fails to disclose as part of its disclosure obligations. The proposed amendments to the sanctions provision of Rule 3001 are grounded in the courts' well-recognized authority to control the presentation of evidence used in court proceedings. The sanctions provision, as revised after public comment, continues to permit exclusionary sanctions only if the failure to provide the required information was not "substantially justified or . . . harmless"; further emphasizes the court's discretion to determine whether that sanction or any other should be imposed; and makes it clear that "notice and hearing" is required before the imposition of any sanction. The Committee Note specifically recognizes that a creditor's failure to provide the required information under the proposed amendment to Rule 3001(c) is not in itself a ground for

disallowance of the claim. The claim can be disallowed only if it comes within one of the grounds for disallowance under § 502(b) of the Bankruptcy Code.

As published in August 2009, the proposed amendments to Rule 3001(c) would have required the holder of a claim based on an open-end or revolving consumer credit agreement to attach to its proof of claim the last account statement sent to the debtor before the commencement of the bankruptcy case. Consumer bankruptcy lawyers, trustees, and judges have long raised concerns about creditors filing bare proofs of claim with little supporting documentation, especially bulk purchasers of credit-card debt. Such bare proofs of claim make it virtually impossible to ascertain whether the claims are valid. Though such bare proofs of claim raise suspicions, debtors' lawyers have little incentive to expend time and resources to evaluate such claims because they generally receive no compensation for the effort and any money derived from such efforts is paid to other unsecured creditors. The trustees often cannot investigate suspicious proofs of claim because of their workload burdens. As a result, despite the lack of supporting documentation, many invalid claims purchased in bulk are simply not challenged.

During the public comment period, many supported the increased disclosure requirements. Representatives of bulk purchasers of credit card debt, however, strongly objected to the account statement requirement. They asserted that the statement will often not be available when the proof of claim is filed. Under federal record retention policies for financial institutions, credit card account records generally need to be retained for only two years. Furthermore, account information is usually stored in an electronic format, and it may not be practicable to produce a duplicate of an account statement. The advisory committee concluded that if there is a less burdensome way for a creditor to provide the information needed to assess the validity of its claim, the rule should not insist on an exclusive, more costly, means of providing such

information. This provision was revised to allow creditors to provide information relevant to determinations of the age, prior holders, and other salient features of the claim in a more convenient fashion. The modified proposed rule also relieves claimants to which it applies from the general requirement of filing the original or duplicate of the writing on which the claim is based. Instead, the proposed rule provides that documentation relating to an open-end or revolving consumer credit claim must be disclosed if a party in interest requests it. Because the revisions were so significant, this proposal will be published in August 2010 for public comment and is not presented to the Judicial Conference at this time.

*Rule 3002.1*

Proposed new Rule 3002.1 implements § 1322(b)(5) of the Bankruptcy Code, which permits a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor's plan. The rule is intended to provide the mortgagor-debtor information necessary to determine the exact amount needed to cure any prepetition arrearage and the amount of the postpetition payments. If the latter amount changes over time because of changing interest rates, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment must be conveyed to the debtor and trustee. Numerous consumer bankruptcy lawyers, trustees, and judges have reported that debtors often do not learn until after completing a chapter 13 plan that the mortgage payments have changed. In particular, debtors do not learn that fees, expenses, or other charges have been imposed during the life of the plan. As a result, debtors may face renewed foreclosure proceedings immediately after emerging from bankruptcy. Timely notice of such changes will permit the debtor and trustee to adjust postpetition mortgage payments and, if appropriate, challenge the validity of fees, expenses, or other charges assessed during the bankruptcy.

Under the proposed rule, the holder of a home mortgage claim must give: (1) a notice itemizing any postpetition fees, expenses, or charges within 180 days after they are incurred; and (2) at least 21 days' advance notice to the debtor, debtor's counsel, and the trustee of any postpetition changes in the mortgage payment amount. To address suggestions for different time periods and concerns about how the time period would apply to loan payments that adjust frequently, the deadline to notify the debtor of any payment changes was revised after the public comment period from thirty to 21 days before the debtor's payment in the new amount is due.

The proposed rule also establishes a procedure for determining whether the debtor has cured any default and is otherwise current on mortgage payments at the close of a chapter 13 case. Finally, the proposed rule provides for sanctions if the holder of a claim secured by the debtor's principal residence fails to provide any of the required information.

*Rule 4004*

The proposed amendments to Rule 4004 provide that a party may seek an extension of time, based on newly discovered information, to object to a debtor's discharge after the time for objecting expires but before a discharge is granted. In some cases the court does not enter a discharge immediately after the objection deadline passes. A gap period — between the expiration of the time for objecting and the actual entry of a discharge — is created during which a party may discover information that would have provided a basis for objecting had it been known in time to object. When the discharge is later entered, revocation of the discharge under § 727(d) of the Bankruptcy Code may not be available based on information acquired in the gap period, because some grounds for revocation require the complaining party to have learned of the debtor's misconduct after the entry of the discharge. The amendments allow a party in that

circumstance to file a motion for extension of time to object to the debtor's discharge even though the objection period has expired.

*Rule 6003*

The proposed amendments to Rule 6003 clarify that the 21-day waiting period before a court can enter certain orders at the beginning of a case, including an order approving employment of counsel, does not prevent the court from specifying in the order that it is effective as of an earlier date. The amendments recognize the common practice of such *nunc pro tunc* orders.

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The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference —

- a. Approve the proposed amendments to Bankruptcy Rules 2003, 2019, 3001, 4004, and 6003, and new Rules 1004.2 and 3002.1, 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.

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

LEE H. ROSENTHAL  
CHAIR  
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**MEMORANDUM**

**TO:** Honorable Lee H. Rosenthal, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Judge Laura Taylor Swain, Chair  
Advisory Committee on Bankruptcy Rules

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

**DATE:** May 27, 2010 (revised June 14, 2010)

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on April 29 and 30, 2010, in New Orleans, Louisiana. Among the matters before the Committee were the proposed amendments and new rules that were published for public comment in August 2009. More than 150 written comments were submitted in response to the publication. The Committee held a hearing in New York City on February 5, 2010. Fifteen witnesses testified on the proposed amendments to two rules and on one proposed new rule. The Committee also conducted a telephonic hearing with one witness on December 22, 2009.

Through a series of telephonic subcommittee meetings and at its New Orleans meeting, the Committee carefully considered all of the comments and testimony it had received and, as is discussed below, it is recommending changes to several of the published rules in response. The Committee also studied a number of new proposals for amendments to the Bankruptcy Rules and Forms.

The Committee took action on the following matters, which it presents to the Standing Committee with the indicated recommendations:

(a) approval for transmission to the Judicial Conference of published amendments to Rules 2003, 2019, 3001, 4004, 6003, . . . and new Rules 1004.2 and 3002.1;

\* \* \* \* \*

## II. Action Items

### A. Items for Final Approval

*1. Amendments and New Rules Published for Comment in August 2009. The Advisory Committee recommends that the proposed amendments and new rules that are summarized below be approved and forwarded to the Judicial Conference.* The texts of the amended rules and forms and of the new rules are set out in Appendix A.

**Rule 1004.2** is new. Subdivision (a) requires that the entity filing a chapter 15 petition identify in the petition the country in which the debtor has the center of its main interests (“COMI”). It also requires that the filer list each country in which a case involving the debtor is pending. Subdivision (b) sets a deadline for challenging the statement of the debtor’s COMI. In response to comments received after initial publication of the proposed rule in August 2008, the Committee changed the deadline in subdivision (b) for filing a motion challenging the COMI designation from “60 days after the notice of the petition has been given” to “no later than seven days before the date set for the hearing on the petition.”

No comments were submitted on the proposed rule in response to the August 2009 publication. Only stylistic changes were made after that publication. The Committee voted unanimously to approve it.

**Rule 2003** is amended in subdivision (e) to require the presiding official at a meeting of creditors to file a statement specifying the date and time to which the meeting is adjourned. This requirement will ensure that the record clearly reflects whether the meeting of creditors was concluded or adjourned to another day.

Nine comments were submitted about this proposed amendment. Eight of the comments expressed support for the amended rule as proposed. These comments were submitted by six individual members of the consumer bar, by Bankruptcy Judge Marvin Isgur of the Southern District of Texas, and by David Shaev on behalf of the National Association of Consumer Bankruptcy Attorneys.

The ninth comment was submitted by Deborah A. Butler, Associate Chief Counsel of the IRS, on behalf of the Office of Chief Counsel. She recommended revising the proposed amendment to require the official presiding at the meeting of creditors to specify whether the meeting is being held open pursuant to § 1308(b) to allow a taxpayer additional time to file a tax return, or adjourned for some other purpose. Only if the trustee declared that the meeting was being “held open” under § 1308(b) would the debtor be protected from dismissal or conversion under § 1307(e) for the failure to file a tax return within the time specified by § 1308.

The Committee, by a 9 to 4 vote, approved the amendment to Rule 2003(e) as published, with a clarifying change to the Committee Note. It concluded that holding open a meeting is equivalent to adjourning it to a specific date and that a chapter 13 case should not be subject to conversion or dismissal merely because of the language the trustee uses in adjourning a meeting of creditors.

**Rule 2019** is amended to expand the scope of the rule’s coverage and the content of its disclosure requirements. As amended, the rule requires disclosures in chapter 9 and chapter 11 cases by committees, groups, or entities that consist of or represent more than one creditor or equity security holder. The type of financial information that must be disclosed is expanded to extend to all “disclosable economic interests,” a term that is broadly defined in subdivision (a) to include, not just claims or interests, but all economic rights and interests that could affect the legal and strategic positions that a stakeholder takes in a case. Stylistic and organizational changes are made throughout the rule, resulting in new subdivisions (c), (d), and (e).

Publication of the proposed amendments to this rule attracted much attention. Seven witnesses presented testimony concerning the Rule 2019 amendments at the Committee’s hearing in New York on February 5, 2010, and 14 individuals or organizations submitted written comments on the amendments. The major topics addressed by the testimony and comments are discussed below.

*Price and date of acquisition information.* Most of the opposition to the published amendments focused on proposed Rule 2019(c)(2)(B) and (C) and (c)(3)(B) and (C). As published, these provisions would have required the disclosure of the date when each disclosable economic interest was acquired (if not more than one year before the filing of the petition) and, if directed by the court, the amount paid for each disclosable economic interest. These disclosure obligations would have applied to each covered entity, indenture trustee, member of a group or committee, and to each creditor or equity security holder represented by a covered entity, indenture trustee, or committee or group (other than an official committee).

The objectors to these provisions raised a consistent set of concerns:

- The price paid for a claim or interest is generally irrelevant to any issue in a chapter 11 case.
- If this information should ever be relevant, it could be obtained through discovery or pursuant to the court’s inherent authority to order its disclosure.

- Pricing information is highly guarded by distressed debt purchasers. Requiring its disclosure will allow competing firms to determine the disclosing party's trading strategy.
- Parties in interest engage in the strategic use of the authority to compel the disclosure of this confidential information.
- The existence of this requirement, proposed to be made explicitly applicable to *ad hoc* committees, will discourage the formation of such groups and will decrease the purchasing of distressed debt.
- The disclosure of the date of purchase enables other parties to determine the purchase price. Thus the required disclosure in all cases of the date of purchase will result in the acquisition price being revealed, whether or not the court directs its disclosure.

Bankruptcy Judge Robert Gerber of the Southern District of New York testified in favor of the published amendments, including the provisions for disclosure of date and price of acquisition. He indicated, however, that a more general disclosure of the time of acquisition and a required showing of relevance of price might be sufficient to serve the rule's purposes.

*Disclosure regarding clients who do not actively participate in the case.* The National Bankruptcy Conference ("NBC") commented that an entity, such as a law firm, should not be made subject to the rule when it represents more than one client with respect to a chapter 11 case but it does not appear in court to seek or oppose the granting of relief on behalf of more than one of those clients. NBC argued that if a client remains passive in the case, there is no reason to require the public disclosure of its holdings merely because it retained a firm that happens to represent one or more other creditors or equity security holders.

*Exclusions from the rule.* Several comments asserted that administrative agents under credit agreements should not be required to disclose information regarding each of the lenders in its syndicated credit facility; others argued further that such agents should be exempted altogether from the rule's coverage. It was argued that these entities are not agents in the traditional sense of that term since the lenders are free to take positions adverse to the agent. Furthermore, it was contended, the lenders themselves are often not acting in concert with each other and so should not be covered by the rule just because there happens to be an administrative agent under the credit agreement.

Somewhat similarly, the argument was made that indenture trustees should not be required to make disclosures regarding every bondholder under the applicable indenture merely because the bonds were issued under an indenture. Another comment stated that the rule should be revised to make clear that it does not cover class action representatives.

*Supplemental statements.* Several comments addressed the proposed requirement in subdivision (d) that supplemental verified statements be filed monthly, setting forth any material changes in the facts disclosed in a previously filed statement. The comments expressed concern that the requirement would be overly burdensome on the parties and the court. Some commentators sought clarification that a supplemental statement would not have to be filed if no changes had

occurred. One comment suggested that verified statements be supplemented only when the group, committee, or entity that filed the original statement was seeking to participate in matters before the court. That change, it was argued, would relieve parties no longer active in the case from the continuing obligation to file supplemental statements.

*The enforcement provision of subdivision (e).* The published draft of amended Rule 2019 proposed mostly organizational and stylistic changes to the existing provisions of Rule 2019(b), which authorize sanctions for the failure to comply with the rule's requirements. Under the revised rule, those provisions are set forth in subdivision (e). Although this part of the rule did not attract attention at the New York hearing, two sets of written comments criticized the breadth of proposed subdivision (e). Like the existing rule, the proposed subdivision would have authorized the court to determine and impose sanctions for violations of applicable law other than Rule 2019. It would also continue to specify certain materials that the court could examine in making its determination.

Both the comment submitted by the Loan Syndications and Trading Association ("LSTA") and the Securities Industry and Financial Markets Association ("SIFMA") and the comment submitted by the Insolvency Law Committee of the Business Law Section of the California State Bar questioned the authority of bankruptcy courts to determine "whether there has been any failure to comply with any other applicable law regulating the activities and personnel of any entity, group, committee, or indenture trustee" and "whether there has been any impropriety in connection with any solicitation." LSTA and SIFMA also argued that the materials that the court can examine in making a determination under this subdivision should be left to the Federal Rules of Evidence.

*Disclosure by entities that are seeking or opposing relief.* As published, Rule 2019(b) would have authorized the court, on motion of a party in interest or on its own motion, to require disclosure of some or all of the information specified in subdivision (c)(2) by an entity that seeks or opposes the granting of relief. This part of the rule would apply to individual entities that do not represent others. While disclosure by such entities would not be routinely required, the provision would authorize the court to order disclosure when knowledge of a party's economic stake in the debtor would assist the court in evaluating the party's arguments.

Two commentators expressed concerns about this part of the proposed rule. The Clearing House Association argued that the addition of the provision was inconsistent with the original purpose of the rule – protection of represented parties; that the information could be obtained by means of discovery or Rule 2004 if relevant; and that the provision would lead to abusive litigation by parties seeking merely to harass opponents. Bankruptcy Judge Michael Lynn of the Northern District of Texas also expressed concern about the likely tactical use of this provision. He suggested that an order for such disclosure by an entity that is not representing others should issue only on the court's own motion, or on motion by the U.S. trustee, the case trustee, or an examiner.

*Repeal of Rule 2019 or adoption of an alternative to its verified statement requirement.* The Committee's consideration of Rule 2019 was prompted by a suggestion of two trade associations that the rule be repealed. After publication of the proposed amendments, however, those organizations

no longer advocated repeal. The only commentator who supported repeal of Rule 2019 was attorney Thomas Lauria. In both his testimony and his written comments, he argued that the rule chills participation by *ad hoc* committees in chapter 11 cases, that it is used improperly for tactical purposes by parties, and that its valid purpose can be fulfilled by the use of discovery. Another attorney, Martin Bienenstock, suggested that parties be allowed to satisfy Rule 2019 by filing three certifications rather than the verified statement required by the rule. The certifications would require a party to state the amount of its pre- and postpetition claims against the debtor and whether it held economic interests in the debtor or in an affiliate of the debtor that would increase in value if the debtor's estate decreased in value.

The overwhelming majority of commentators supported a clarified and reinvigorated Rule 2019, even if they opposed specific aspects of the proposed amendments. They favored providing greater transparency in the chapter 11 reorganization process and permitting creditors and equity security holders to have access to information about possible conflicts of interest of those purporting to represent them.

The Committee's careful consideration of all the views expressed in the testimony and comments led it to make several changes to the published rule. In addition to stylistic changes, the Committee unanimously recommends that revised Rule 2019 be approved with the following changes made after publication, all of which are responsive to suggestions made in the comments and testimony and narrow in some respects the provisions of the published rule:

- the addition of a definition of "represent" or "represents" in subdivision (a)(2) that limits the meaning of the terms to taking a position before the court or soliciting votes on a plan, thereby removing entities that are only passively involved in a case from coverage under the rule;
- the addition of a provision in subdivision (b)(1) providing that the covered groups, committees, and entities are those that represent or consist of multiple creditors or equity security holders that act in concert to advance their common interests and are not composed entirely of affiliates or insiders of one another;
- the elimination of the provision in subdivision (b) of the published amendments that authorized the court to require disclosure by an entity that does not represent anyone else;
- the addition of subdivision (b)(2), which excludes certain entities from the rule's disclosure requirements unless the court orders otherwise;
- the elimination from subdivision (c) of the authorization for the court to order the disclosure of the amount paid for a disclosable economic interest;
- with respect to disclosure of the date of acquisition of a disclosable economic interest, the limitation of the requirement in subdivision (c) to the quarter and year of acquisition and the restriction of its application to an unofficial group or committee that claims to represent any entity other than its members;
- revision of subdivision (d) to require the filing of supplemental statements only when a covered entity, group, or committee is taking a position before the court or solicits

votes on a plan, and any fact disclosed in its most recently filed statement has changed materially;

- revision of subdivision (e) to limit the scope of this sanctions provision to failures to comply with the provisions of Rule 2019 and to eliminate the enumeration of materials the court may examine in making a determination of noncompliance; and
- the addition of a sentence to the Committee Note stating that the rule does not affect the right to obtain information by means of discovery or as ordered by the court under authority outside the rule.

**Rule 3001** is amended to prescribe in greater detail the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the possible consequences of failing to provide the required information. As published, existing subdivision (c) was redesignated as (c)(1), and it included a new provision applicable to a claim based on an open-end or revolving consumer credit agreement. The new clause would have required the proof of claim to be accompanied by the last account statement sent to the debtor prior to the filing of the bankruptcy petition. Based on the testimony and comments that were submitted, the Committee voted to withdraw that proposed provision. In its place, the Committee recommends approval for publication of a new subdivision (c)(3), which is discussed below in section II B of this report.

New subdivision (c)(2) requires additional information to be filed with a proof of claim in a case in which the debtor is an individual. This additional information includes an itemization of interest, fees, expenses, and other charges incurred prior to the petition and included in a claim; a statement of the amount necessary to cure any prepetition default on a claim secured by a security interest in the debtor's property; and, for a claim secured by a security interest in the debtor's principal residence, an escrow account statement as of the petition date if an escrow account has been established. Subdivision (c)(2) also authorizes the imposition of sanctions on a creditor who fails to provide the information required by this subdivision.

The Committee received numerous comments and testimony favoring and opposing the published version of Rule 3001(c)(2) – both as applied to credit card and other unsecured claims and as applied to home mortgage claims. They are summarized below.

*Requirement in subparagraph (A) for itemized statement of interest, fees, expenses, or charges.* Most of the comments concerning this provision related to unsecured claims, particularly those based on credit card debt. Despite the current and longstanding requirement of the proof of claim form that an “itemized statement of interest or charges” be attached if the “claim includes interest or other charges in addition to the principal amount of claim,” commentators opposing this proposed rule provision asserted that it is often impossible to break out the components of credit card debt because, depending upon the terms of the applicable credit agreement, unpaid interest and fees may be folded into the principal balance. They further contended that in most bankruptcy cases the debtor has no need for this information. While they acknowledged that mortgage lenders may have a history of including inflated or unnecessary fees and charges in their claims, they argued that this problem does not generally exist with respect to unsecured credit card claims.

Two comments addressed this requirement as it applies to mortgage claims. Attorney John Cannizzaro suggested that this provision should require more detail. He proposed that the following sentence be added to subparagraph (A): "The itemized statement shall include evidence of the expenditure, the identity of the entity to whom the payment was made and the reason for the expenditure." The other comment was submitted by Judge Marvin Isgur, and it is discussed below in connection with subparagraph (B).

*Requirement in subparagraph (B) for a statement of the amount necessary to cure any default as of the date of the petition.* Three comments addressed this requirement. The written comment submitted on behalf of the American Bankers Association, the Financial Services Roundtable, and the Mortgage Bankers Association raised two objections to this requirement. First, it noted that in the case of a judgment lien, the cure amount would be the entire indebtedness. Second, it questioned the need for the inclusion of this requirement in the rule since the proof of claim form already requires this information to be provided.

Another comment on this subparagraph was submitted by Bankruptcy Judge Marvin Isgur of the Southern District of Texas in his written comments. While supporting the purpose behind this provision and subparagraph (A), Judge Isgur questioned the effectiveness of the two provisions in addressing the problems that he has encountered with home mortgage proofs of claim. He said that a full loan history, which provides more detailed information about the assessment of fees, expenses, charges, and the application of payments, is needed. Judge Isgur expressed particular concern that, without the submission of a full loan history, it may not be evident when payments were actually made by the debtor (as opposed to the months for which payments were applied by the mortgagee). He advocated the use of a form similar to the local form that has been adopted by his district.

The National Association of Consumer Bankruptcy Attorneys also urged that a complete loan history be required. It stated that "[w]ithout such documents, a trustee cannot know how much of the amount claimed is for penalties, such as late charges and overbalance fees, that are classified differently in bankruptcy."

*Requirement in subparagraph (C) for an escrow account statement.* Three comments specifically addressed this provision. First, the written comment of the American Bankers Association, the Financial Services Roundtable, and the Mortgage Bankers Association noted that an escrow statement is already required to be provided by local rules in many jurisdictions. The comment expressed the need for a uniform national form to provide this information and suggested that the proposal be withdrawn until such a form is developed.

Second, chapter 13 trustee Debra Miller, on behalf of the National Association of Chapter Thirteen Trustees' Mortgage Liaison Committee, raised concerns about this provision. She explained that some smaller servicers lack the capacity to run an escrow analysis as of a particular date (such as the date of the filing of the petition).

Finally, Judge Isgur, in both his testimony on December 22, 2009, and his written comments, raised a concern about subparagraph (C). He stated that the requirement of an escrow account statement prepared as of the date of the petition and in a form consistent with applicable nonbankruptcy law might conflict with the Fifth Circuit's decision in *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348 (2008). He described that decision as holding that the prepetition arrearage includes all amounts that the home mortgage lender could have demanded be paid into an escrow account prior to the petition date. He was concerned that an escrow account statement prepared according to applicable nonbankruptcy law would result in a smaller prepetition escrow arrearage, which could be cured over the life of the plan, and would lead to a larger postpetition escrow adjustment, which would have to be paid as part of the debtor's ongoing mortgage payments.

*Sanctions under subparagraph (D).* This is the part of proposed Rule 3001(c)(2) that attracted the most attention and opposition. Several of the comments submitted by persons other than members of the consumer bankruptcy bar raised concerns about this provision. The overall theme of these comments was that the proposed sanctions are overly harsh, are inconsistent with the Code, exceed the authority under the Rules Enabling Act, and are attempting to address a problem that has not been shown to exist. The sanctions in proposed Rule 3001(c)(2)(D) can be imposed on all types of claimants in cases of individual debtors, and the comments generally did not distinguish between the impact of the provision on inadequately documented home mortgage proofs of claim and on unsecured or other types of secured claims.

The most detailed critique of this provision was submitted by Professor Bernadette Bollas Genetin of the University of Akron School of Law. She argued that the provision sweeps too broadly and that by requiring the attachment of additional supporting documentation in every case, even when there is no demonstrated need for the information, the proposed amendments to Rule 3001(c), including its sanction provision, would abridge creditors' substantive rights in violation of the Rules Enabling Act. Viewing the sanction in subparagraph (D) as being tantamount to claim disallowance, she contended that it is inconsistent with § 502 of the Code, as well as disproportionate to the violation in most cases.

Representatives Lamar Smith (ranking minority member of the House Judiciary Committee) and James Langevin of Rhode Island also expressed concerns about the sanctions, focusing primarily on the impact of the rule on unsecured creditors. Both Congressmen questioned whether there was evidence of a significant problem of unsupported claims being filed in consumer cases, and Rep. Smith noted the potential for litigation over compliance and the imposition of new sanctions and attorney's fees for failure to abide by the requirements. He further questioned the authority to provide for the disallowance of claims for failure to comply with the requirements of a rule, as opposed to the grounds for disallowance listed in § 502(b) of the Code.

Likewise, attorney Patti H. Bass contended that subparagraph (D) in effect provides a new basis for the disallowance of a claim, one that is not authorized by the Code. She argued that the provision is therefore in conflict with the Supreme Court's decision in *Travelers Casualty & Surety Co. v. Pacific Gas & Electric Co.*, 549 U.S. 443 (2007), which holds that the grounds for

disallowance are limited to the ones statutorily specified. She further submitted that the sanction provision would create an incentive for debtors to refrain from scheduling debts that they know they owe if they believe that the creditor lacks all of the documentation that would be required under the rule. The debtor would just object to the creditor's insufficiently supported proof of claim, and the creditor would be prevented by the sanction provision from presenting its proof of the validity of the claim in response to the objection.

The comment of John McMickle on behalf of the Housing Policy Council, Financial Services Roundtable, American Bankers Association, and the Mortgage Bankers Association argued that the sanction provision "runs afoul of the Rules Enabling Act by 'modifying' and 'diminishing' a mortgage servicer's statutory right to rely on a presumption of validity for timely-filed proofs of claim." The comment made by Philip Corwin on behalf of several of the same organizations was similar.

Finally, the Insolvency Law Committee of the Business Law Section of the California State Bar commented that the proposed sanctions are too harsh. This group suggested that instead of precluding the creditor from using any omitted information to prove its claim, an insufficiently supported proof of claim should be temporarily disallowed and the claimant should be given an opportunity to provide the missing documentation.

On the other side of the issue, numerous comments filed by consumer bankruptcy lawyers and trustees strongly supported the proposed amendments. They recounted their frustrating experiences in dealing with bare proofs of claim filed by bulk purchasers of credit card debt. They said that claims often failed to comply with existing documentation requirements and that it was impossible to determine how the claim amounts were calculated. Furthermore, they argued, when additional information was sought, claimants frequently failed to respond until an objection was filed, at which point they either withdrew their claims or belatedly provided information that should have been attached to the proof of claim.

Consumer lawyers also expressed frustration with the failure of mortgage claimants to comply with the existing rule requirements and noted their gratitude for the Committee's efforts to address the problems. Representatives John Conyers, Jr., (chair of the House Judiciary Committee) and Steve Cohen (chair of the Subcommittee on Commercial and Administrative Law) submitted a comment that expressed the need for "more enforcement tools" to "polic[e] creditor abuses in consumer bankruptcy cases." They noted testimony given at a congressional hearing that asserted that the filing of false proofs of claim in bankruptcy cases had led families to lose their homes.

Debtors' lawyers explained the disincentives to challenging inadequately documented claims. Debtor's counsel often receives no additional compensation for the effort, and any money freed up from payment to the creditor whose claim is challenged goes to other unsecured creditors. In some cases, they said, the cost of objecting would exceed the payment that would be made to the creditor. Nevertheless, some lawyers or trustees said that, when they had pursued challenges to claims filed

by bulk purchasers of credit card claims, they had discovered claims that were time-barred, filed against the wrong debtor, or excessive in amount.

Supporters of the amendments applauded the proposal to provide sanctions for the failure of claimants to comply with the rules. They noted the burdens the Bankruptcy Code and Rules place on debtors seeking bankruptcy relief and expressed the view that bulk purchasers should not be free to ignore rule requirements based on assertions that compliance would be unduly burdensome. Some members of the consumer bar advocated strengthening the proposed requirements and sanctions.

The Committee carefully considered all of the comments and testimony regarding Rule 3001(c)(2), and it engaged in extensive discussion of the sanction provision. Following its deliberations, the Committee voted to recommend final approval of the provision, with the following changes made to the published draft of subdivision (c)(2):

- Subparagraph (C) was revised to refer to the official form that is being proposed as a required attachment for a proof of claim filed by a creditor with a security interest in the debtor's principal residence. The Committee is recommending that form (Official Form 10 (Attachment A)) for publication for comment in August 2010.
- In subparagraph (D), the sanction provision was revised to eliminate the phrase "shall be precluded," and to provide that the court "may, after notice and hearing, take either or both" of the listed actions.
- The term "security interest" was added to the discussion in the Committee Note of subdivision (c)(2)(B) to underscore that the requirement of a statement of the amount required to cure a prepetition default applies only to consensual liens, and not to judgment liens.
- The discussion in the Committee Note of subparagraph (D) was expanded. As revised, it states that grounds for disallowance of a claim are governed by § 502(b) of the Code and that inadequate documentation of a proof of claim, by itself, is not a basis for disallowance. The Committee Note now also points out that the court retains discretion to allow an amendment to a proof of claim under appropriate circumstances and to impose a sanction different from or in addition to the preclusion of the introduction of evidence.
- Stylistic changes were made to the provision.

**Rule 3002.1** is new. It assists in the implementation of § 1322(b)(5) of the Bankruptcy Code, which permits a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor's plan. As published, subdivision (a) required the holder of a claim secured by a security interest in the debtor's principal residence to provide at least 30 days' notice to the debtor, debtor's counsel, and the trustee of any postpetition changes in the mortgage payment amount. Subdivision (b) prescribed the procedure for giving that notice. Subdivision (c) required the holder of a home mortgage claim to give an itemized notice of any postpetition fees, expenses, or charges within 180 days after they are incurred, and it allowed the debtor or trustee to challenge those additional charges within a year after notice is given.

Subdivisions (d)-(f) established a procedure for determining whether the debtor has cured any default and is otherwise current on the debtor's mortgage payments at the close of a chapter 13 case. Subdivision (g) specified sanctions that could be imposed if the holder of a claim secured by the debtor's principal residence failed to provide any of the information required by this rule.

The Committee received approximately 100 written comments on the published rule, and three witnesses testified concerning it. About three-fourths of the comments were submitted by members of the consumer bankruptcy bar in support of the rule. Several of those commentators described the difficulty they have encountered with the misapplication of payments during the pendency of a chapter 13 case and the lack of information about postpetition mortgage payment changes and the assessment of charges. Attorney Annabelle Patterson, for example, stated that she has had clients successfully emerge from chapter 13, believing that they were current on their mortgage payments, only to be immediately confronted with a notice of delinquency.

None of the comments or testimony opposed the rule in its entirety, but some suggested the need for revision of certain of its provisions. The most significant of these comments are briefly summarized below by category.

*Timing of notice of payment changes.* Three comments raised questions about the proposed requirement of published subdivision (a) that a mortgagee file a notice of payment change "no later than 30 days before a payment at the new amount is due." They expressed concerns about how this provision would apply to loan payments that adjust frequently. One comment suggested that to be consistent with the Truth in Lending Act's notice requirement for adjustable rate mortgages, the notice required by the rule should be given "at least 25, but no more than 120, calendar days prior to the due date of the new payment amount."

*Filing of notice of payment changes.* The comments reflected a division of opinion within the court system about the requirement that the notice of payment change be filed as a supplement to the proof of claim (i.e. on the claims register), rather than on the case docket. A comment submitted on behalf of the Bankruptcy Judges Advisory Group supported the rule's provision for the filing of the notice as a supplement to the proof of claim, which filing can be made by a creditor without the assistance of a lawyer. Another comment, however, indicated that a majority of bankruptcy clerks prefer that payment change notices be filed on the case docket.

*Timing of notice of fees, expenses, and charges and of motion for court determination of validity.* Three comments expressed concern about the requirements of subdivision (c) of the published rule that the mortgagee serve a notice of fees, expenses, and charges "no later than 180 days after the date when the fees, expenses, or charges are incurred" or that the debtor or trustee file a motion "no later than one year after service of the notice" to obtain a court determination of the validity of the fees, expenses, and charges. Testifying at the New York hearing, attorney Philip Corwin stated that compliance with the 180-day requirement may not be feasible in a significant number of cases. His later-submitted written comments did not elaborate on this assertion. The comment submitted by John McMickle on behalf of the Housing Policy Council and other groups

suggested without explanation that the 180-day provision be changed to one year and that the provision for filing a motion to seek a judicial determination be changed from one year to 90 days. Finally, Bankruptcy Judge Howard R. Tallman of the District of Colorado stated that the 180-day notice requirement could result in unnecessary supplementation in chapter 13 cases that are never successfully completed. He also noted that both debtors' and creditors' lawyers in his district expressed concern about the costly prospect of annual litigation over potentially small amounts of fees and charges.

*Procedure for determining the status of the debtor's payments at the end of the case.* Several comments raised issues about the procedure provided in subdivisions (d) - (f) of the published rule regarding the debtor's successful cure of any default and completion of all payments due after the petition. One concern related to the timing of the notice provision. Marie-Ann Greenberg, a standing trustee in the District of New Jersey, pointed out that mortgage defaults, especially when the amounts are relatively small, are sometimes cured early in the case. In such cases the procedure specified in subdivisions (d) - (f) would not result in a determination upon the conclusion of the case that the debtor was current on all payments. Two other comments expressed similar concerns.

Another issue was raised by Bankruptcy Judge Marvin Isgur of the Southern District of Texas in his written comments. He suggested that, in place of the proposed procedure, the rule should authorize a motion at the end of the case for a determination that the debtor is current on all ongoing mortgage payments and has paid all arrearages. The court's ruling on this motion would have a preclusive effect on both parties. Thus if the mortgage were determined to be current at the end of the case, the mortgagee would be precluded from declaring a default and initiating foreclosure proceedings in state court once the bankruptcy case was closed.

*Appropriateness of the rule in all districts.* Several comments suggested that proposed Rule 3002.1 is designed for or is appropriate only in so-called "conduit" districts – those in which the chapter 13 trustee disburses all mortgage payments – as opposed to districts in which the debtor makes ongoing mortgage payments directly to the mortgagee. These comments were based on the provisions of the rule that require notices to be filed on the claims register and service to be made on the trustee (as well as on the debtor and debtor's counsel).

The Committee made several changes to the published Rule 3002.1 in response to the comments and testimony it received:

- As a result of an organizational revision of the rule, the subdivision designations were changed.
- The timing of the notice of payment change, now addressed by subdivision (b), was changed from 30 to 21 days before payment must be made in the new amount.
- The triggering event for the filing of the notice of final cure payment, now addressed by subdivision (f), was changed to the debtor's completion of all payments required under the plan. The subdivision now requires that notice be given to the holder of

- the mortgage claim of its obligation to file and serve a response under subdivision (g).
- The provision governing the consequences of the failure to provide information as required by the rule, now subdivision (i), was revised in the same manner as the sanction provision of Rule 3001(c)(2)(D).
- A sentence was added to the first paragraph of the Committee Note that clarifies that the rule applies in all districts, regardless of whether ongoing mortgage payments are made directly by the debtor or by the chapter 13 trustee.
- Stylistic changes were made throughout the rule and Committee Note.

With these changes made to the preliminary draft of Rule 3002.1, the Committee unanimously recommends that it be given final approval.

**Rule 4004** is amended to permit a party under limited circumstances to seek an extension of time to object to a debtor's discharge after the time for objecting has expired. In some cases the discharge is not entered immediately after the objection deadline passes. That situation creates the possibility during the resulting gap period – between the expiration of the time for objecting and the entry of a discharge – that a party may discover information that would have provided a basis for objecting had it been known in time to object. Even when the discharge is later entered, revocation of the discharge under § 727(d) may not be available based on the information acquired in the gap period, because some grounds for revocation require the complaining party to have learned of the debtor's misconduct *after* the entry of the discharge. Subdivision (b) of the Rule is amended to allow a party in that circumstance to file a motion for extension of time to object to the debtor's discharge even though the objection period under subdivision (a) has already expired.

Three comments were submitted on the proposed amendment. The Insolvency Law Committee of the Business Law Section of the State Bar of California ("ILC") supported the proposed changes. In particular, it approved the proposed rule's reference to § 727(d) as a whole, rather than to any specific paragraph within that subsection. The broader reference, ILC said, allows an extension of time to be sought whenever the debtor commits an act during the gap period that provides a basis for both denial and revocation of the discharge, even if the ground for revocation does not require lack of knowledge of the debtor's misconduct prior to the discharge. The ILC noted approvingly that the amended rule would allow a creditor or trustee to seek an extension of time to object to discharge upon learning of the misconduct, rather than having to wait until the discharge was granted to seek its revocation. It suggested that the Committee Note be amended to clarify the rule's applicability in that situation.

Bankruptcy Judge Wesley Steen of the Southern District of Texas suggested that the proposed amendment does not go far enough. He expressed concern that it fails to address the situation in which a debtor during the gap period engages in conduct of a type that would provide a basis for denial of the discharge under § 727(a) but that is not a ground for revocation of the discharge under § 727(d). In a recent opinion that he attached to his comment, *In re Shankman*, 2009 WL 2855731 (Bankr. S.D. Tex. Sept. 1, 2009), Judge Steen found that Rule 4004 is invalid because

it imposes a deadline that prevents parties from objecting to discharge based on misconduct by the debtor that occurs during the gap period. The proposed amendment, he said, does not fully address this problem because it is limited to conduct that would provide a basis for discharge revocation, and § 727(a) and (d) are not coextensive.

Bankruptcy Judge Marvin Isgur, also of the Southern District of Texas, concurred in Judge Steen's comment. While stating that the proposed amendment "is an excellent change to this Rule," Judge Isgur suggested that the language of the amendment be broadened to address the concerns raised in the *Shankman* opinion.

The Committee voted unanimously to approve the rule amendment as published, with only stylistic changes to the rule itself and a clarifying change to the Committee Note. The Committee decided that the purpose of the amendment is to arrive at the same result as would occur if the discharge were entered promptly after the expiration of the Rule 4004(a) deadline and thus no gap existed. In that situation, § 727(d) would determine whether acts committed or discovered after the discharge would provide a basis for revocation, and not all acts that might have resulted in denial of the discharge would qualify as grounds for revocation. A sentence was added to the Committee Note to clarify that the amended rule authorizes an extension of time to object to discharge whenever a debtor commits an act during the gap period that provides a basis for both denial and revocation of the discharge.

**Rule 6003** is amended to clarify that the 21-day waiting period before a court can enter certain orders at the beginning of a case, including an order approving employment of counsel, does not prevent the court from specifying in the order that it is effective as of an earlier date.

\* \* \* \* \*

PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE\*

**Rule 1004.2. Petition in Chapter 15 Cases\*\***

1                   (a) DESIGNATING CENTER OF MAIN  
2                   INTERESTS. A petition for recognition of a foreign  
3                   proceeding under chapter 15 of the Code shall state the  
4                   country where the debtor has its center of main interests. The  
5                   petition shall also identify each country in which a foreign  
6                   proceeding by, regarding, or against the debtor is pending.  
7                   (b) CHALLENGING DESIGNATION. The United  
8                   States trustee or a party in interest may file a motion for a  
9                   determination that the debtor's center of main interests is  
10                   other than as stated in the petition for recognition  
11                   commencing the chapter 15 case. Unless the court orders

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

\*\*In addition to the adoption of Rule 1004.2, Official Form 1 would be amended to include a line on the form where the foreign representative indicates the country of the debtor's center of main interests. The Official Form would also be amended to include a line or lines on which the filer would set out the countries in which cases are pending.

## 2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

12        otherwise, the motion shall be filed no later than seven days  
13        before the date set for the hearing on the petition. The motion  
14        shall be transmitted to the United States trustee and served on  
15        the debtor, all persons or bodies authorized to administer  
16        foreign proceedings of the debtor, all entities against whom  
17        provisional relief is being sought under § 1519 of the Code,  
18        all parties to litigation pending in the United States in which  
19        the debtor was a party as of the time the petition was filed,  
20        and such other entities as the court may direct.

**COMMITTEE NOTE**

This rule is new. Subdivision (a) directs any entity that files a petition for recognition of a foreign proceeding under chapter 15 of the Code to state in the petition the center of the debtor's main interests. The petition must also list each country in which a foreign proceeding involving the debtor is pending. This information will assist the court and parties in interest in determining whether the foreign proceeding is a foreign main or nonmain proceeding.

Subdivision (b) sets a deadline of seven days prior to the hearing on the petition for recognition for filing a motion challenging the statement in the petition regarding the country in which the debtor's center of main interests is located.

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**Changes Made After Publication**

The rule was first published for comment in August 2008. After publication, the deadline in subdivision (b) for challenging the designation of the center of the debtor's main interests was changed from "60 days after the notice of the petition has been given" to "no later than seven days before the date set for the hearing on the petition."

The rule as revised was published in August 2009. Minor stylistic changes were made to the rule's language and the Committee Note following that publication.

No comments were submitted on proposed Rule 1004.2 after its republication in August 2009.

**Rule 2003. Meeting of Creditors or Equity Security Holders**

1

\* \* \* \* \*

2 (e) ADJOURNMENT. The meeting may be adjourned  
3 from time to time by announcement at the meeting of the  
4 adjourned date and time without further written notice. The  
5 presiding official shall promptly file a statement specifying  
6 the date and time to which the meeting is adjourned.

7

\* \* \* \* \*

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**COMMITTEE NOTE**

**Subdivision (e).** Subdivision (e) is amended to require the presiding official to file a statement after the adjournment of a meeting of creditors or equity security holders designating the period of the adjournment. The presiding official is the United States trustee or the United States trustee's designee. This requirement will provide notice to parties in interest not present at the initial meeting of the date and time to which the meeting has been continued. An adjourned meeting is "held open" as permitted by § 1308(b)(1) of the Code. The filing of this statement will also discourage premature motions to dismiss or convert the case under § 1307(e).

### **Changes Made After Publication**

No changes were made to the language of the rule following publication. The Committee Note was revised to state more explicitly that adjournment of a meeting of creditors to a specific date constitutes holding it open for purposes of § 1308(b) of the Bankruptcy Code.

**Rule 2019. Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases**

1 (a) DATA REQUIRED. In a chapter 9 municipality  
2 or chapter 11 reorganization case, except with respect to a  
3 committee appointed pursuant to § 1102 or 1114 of the Code;

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 5

4 every entity or committee representing more than one creditor  
5 or equity security holder and, unless otherwise directed by the  
6 court, every indenture trustee, shall file a verified statement  
7 setting forth (1) the name and address of the creditor or equity  
8 security holder, (2) the nature and amount of the claim or  
9 interest and the time of acquisition thereof unless it is alleged  
10 to have been acquired more than one year prior to the filing of  
11 the petition; (3) a recital of the pertinent facts and  
12 circumstances in connection with the employment of the  
13 entity or indenture trustee, and, in the case of a committee, the  
14 name or names of the entity or entities at whose instance,  
15 directly or indirectly, the employment was arranged or the  
16 committee was organized or agreed to act; and (4) with  
18 reference to the time of the employment of the entity, the  
18 organization or formation of the committee, or the appearance  
19 in the case of any indenture trustee, the amounts of claims or  
20 interests owned by the entity, the members of the committee

## 6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

21 or the indenture trustee, the times when acquired, the amounts  
22 paid therefor, and any sales or other disposition thereof. The  
23 statement shall include a copy of the instrument, if any,  
24 whereby the entity, committee, or indenture trustee is  
25 empowered to act on behalf of creditors or equity security  
26 holders. A supplemental statement shall be filed promptly,  
27 setting forth any material changes in the facts contained in the  
28 statement filed pursuant to this subdivision.

29 ————— (b) FAILURE TO COMPLY; EFFECT. On motion of  
30 any party in interest or on its own initiative, the court may (1)  
31 determine whether there has been a failure to comply with the  
32 provisions of subdivision (a) of this rule or with any other  
33 applicable law regulating the activities and personnel of any  
34 entity, committee, or indenture trustee or any other  
35 impropriety in connection with any solicitation and, if it so  
36 determines, the court may refuse to permit that entity,  
37 committee, or indenture trustee to be heard further or to

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 7

38       intervene in the case; (2) examine any representation  
39       provision of a deposit agreement, proxy, trust mortgage, trust  
40       indenture, or deed of trust, or committee or other  
41       authorization, and any claim or interest acquired by any entity  
42       or committee in contemplation or in the course of a case  
43       under the Code and grant appropriate relief; and (3) hold  
44       invalid any authority, acceptance, rejection, or objection  
45       given, procured, or received by an entity or committee who  
46       has not complied with this rule or with § 1125(b) of the Code.

**Rule 2019. Disclosure Regarding Creditors and Equity  
Security Holders in Chapter 9 and Chapter 11 Cases**

47       (a) DEFINITIONS. In this rule the following terms  
48       have the meanings indicated:  
49               (1) “Disclosable economic interest” means any  
50       claim, interest, pledge, lien, option, participation, derivative  
51       instrument, or any other right or derivative right granting the

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52 holder an economic interest that is affected by the value,  
53 acquisition, or disposition of a claim or interest.

54 (2) “Represent” or “represents” means to take a  
55 position before the court or to solicit votes regarding the  
56 confirmation of a plan on behalf of another.

57 (b) DISCLOSURE BY GROUPS, COMMITTEES,  
58 AND ENTITIES.

59 (1) In a chapter 9 or 11 case, a verified statement  
60 setting forth the information specified in subdivision (c) of  
61 this rule shall be filed by every group or committee that  
62 consists of or represents, and every entity that represents,  
63 multiple creditors or equity security holders that are (A)  
64 acting in concert to advance their common interests, and (B)  
65 not composed entirely of affiliates or insiders of one another.

66 (2) Unless the court orders otherwise, an entity is  
67 not required to file the verified statement described in

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 9

68       paragraph (1) of this subdivision solely because of its status

69       as:

70            (A) an indenture trustee;

71            (B) an agent for one or more other entities

72       under an agreement for the extension of credit;

73            (C) a class action representative; or

74            (D) a governmental unit that is not a person.

75       (c) INFORMATION REQUIRED. The verified

76       statement shall include:

77            (1) the pertinent facts and circumstances

78       concerning:

79            (A) with respect to a group or committee,

80       other than a committee appointed under § 1102 or § 1114 of

81       the Code, the formation of the group or committee, including

82       the name of each entity at whose instance the group or

83       committee was formed or for whom the group or committee

84       has agreed to act; or

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85 (B) with respect to an entity, the employment  
86 of the entity, including the name of each creditor or equity  
87 security holder at whose instance the employment was  
88 arranged;

89 (2) if not disclosed under subdivision (c)(1), with  
90 respect to an entity, and with respect to each member of a  
91 group or committee;

92 (A) name and address;  
93 (B) the nature and amount of each  
94 disclosable economic interest held in relation to the debtor as  
95 of the date the entity was employed or the group or committee  
96 was formed; and

97 (C) with respect to each member of a group  
98 or committee that claims to represent any entity in addition to  
99 the members of the group or committee, other than a  
100 committee appointed under § 1102 or § 1114 of the Code, the  
101 date of acquisition by quarter and year of each disclosable

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 11

102        economic interest, unless acquired more than one year before  
103        the petition was filed;

104            (3) if not disclosed under subdivision (c)(1) or  
105        (c)(2), with respect to each creditor or equity security holder  
106        represented by an entity, group, or committee, other than a  
107        committee appointed under § 1102 or § 1114 of the Code;

108            (A) name and address; and  
109            (B) the nature and amount of each  
110        disclosable economic interest held in relation to the debtor as  
111        of the date of the statement; and

112            (4) a copy of the instrument, if any, authorizing  
113        the entity, group, or committee to act on behalf of creditors or  
114        equity security holders.

115            (d) SUPPLEMENTAL STATEMENTS. If any fact  
116        disclosed in its most recently filed statement has changed  
117        materially, an entity, group, or committee shall file a verified  
118        supplemental statement whenever it takes a position before

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119 the court or solicits votes on the confirmation of a plan. The  
120 supplemental statement shall set forth the material changes in  
121 the facts required by subdivision (c) to be disclosed.

122 (e) DETERMINATION OF FAILURE TO COMPLY;  
123 SANCTIONS.

124 (1) On motion of any party in interest, or on its  
125 own motion, the court may determine whether there has been  
126 a failure to comply with any provision of this rule.

127 (2) If the court finds such a failure to comply, it  
128 may:

129 (A) refuse to permit the entity, group, or  
130 committee to be heard or to intervene in the case;

131 (B) hold invalid any authority, acceptance,  
132 rejection, or objection given, procured, or received by the  
133 entity, group, or committee; or

134 (C) grant other appropriate relief.

**COMMITTEE NOTE**

The rule is substantially amended to expand the scope of its coverage and the content of its disclosure requirements. Stylistic and organizational changes are also made in order to provide greater clarity. Because the rule no longer applies only to representatives of creditors and equity security holders, the title of the rule has been changed to reflect its broadened focus on disclosure of financial information in chapter 9 and chapter 11 cases.

**Subdivision (a).** The content of subdivision (a) is new. It sets forth two definitions. The first is the definition of the term “disclosable economic interest,” which is used in subdivisions (c)(2) and (c)(3). The definition of the term is intended to be sufficiently broad to cover any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 9 or chapter 11 case. A disclosable economic interest extends beyond claims and interests owned by a stakeholder and includes, among other types of holdings, short positions, credit default swaps, and total return swaps.

The second definition is of “represent” or “represents.” The definition provides that representation requires active participation in the case or in a proceeding on behalf of another entity — either by taking a position on a matter before the court or by soliciting votes on the confirmation of a plan. Thus, for example, an attorney who is retained and consulted by a creditor or equity security holder to monitor the case, but who does not advocate any position before the court or engage in solicitation activities on behalf of that client, does not represent the creditor or equity security holder for purposes of this rule.

**Subdivision (b).** Subdivision (b)(1) specifies who is covered by the rule’s disclosure requirements. In addition to an entity, group,

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or committee that *represents* more than one creditor or equity security holder, the amendment extends the rule's coverage to groups or committees that *consist of* more than one creditor or equity security holder. The rule no longer excludes official committees, except as specifically indicated. The rule applies to a group of creditors or equity security holders that act in concert to advance common interests (except when the group consists exclusively of affiliates or insiders of one another), even if the group does not call itself a committee.

Subdivision (b)(2) excludes certain entities from the rule's coverage. Even though these entities may represent multiple creditors or equity security holders, they do so under formal legal arrangements of trust or contract law that preclude them from acting on the basis of conflicting economic interests. For example, an indenture trustee's responsibilities are defined by the indenture, and individual interests of bondholders would not affect the trustee's representation.

**Subdivision (c).** Subdivision (c) sets forth the information that must be included in a verified statement required to be filed under this rule. Subdivision (c)(1) continues to require disclosure concerning the formation of a committee or group, other than an official committee, and the employment of an entity.

Subdivision (c)(2) specifies information that must be disclosed with respect to the entity and each member of the committee and group filing the statement. In the case of a committee or group, the information about the nature and amount of a disclosable economic interest must be specifically provided on a member-by-member basis, and not in the aggregate. The quarter and year in which each disclosable economic interest was acquired by each member of a committee or group (other than an official committee) that claims to represent others must also be specifically

provided, except for a disclosable economic interest acquired more than a year before the filing of the petition. Although the rule no longer requires the disclosure of the precise date of acquisition or the amount paid for disclosable economic interests, nothing in this rule precludes either the discovery of that information or its disclosure when ordered by the court pursuant to authority outside this rule.

Subdivision (c)(3) specifies information that must be disclosed with respect to creditors or equity security holders that are represented by an entity, group, or committee. This provision does not apply with respect to those represented by official committees. The information required to be disclosed under subdivision (c)(3) parallels that required to be disclosed under subdivision (c)(2)(A) and (B). The amendment also clarifies that under (c)(3) the nature and amount of each disclosable economic interest of represented creditors and shareholders must be stated as of the date of the verified statement.

Subdivision (c)(4) requires the attachment of any instrument authorizing the filer of the verified statement to act on behalf of creditors or equity security holders.

**Subdivision (d).** Subdivision (d) requires the filing of a supplemental statement at the time an entity, group, or committee takes a position before the court or solicits votes on a plan if there has been a material change in any of the information contained in its last filed statement. The supplemental verified statement must set forth the material changes that have occurred regarding the information required to be disclosed by subdivision (c) of this rule.

**Subdivision (e).** Subdivision (e) addresses the court's authority to determine whether there has been a violation of this rule and to impose a sanction for any violation. It no longer addresses the

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court's authority to determine violations of other applicable laws regulating the activities and personnel of an entity, group, or committee.

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**Changes Made After Publication**

Subdivision (a). A definition of "represent" or "represents" was added, and the subdivision was divided into paragraphs (1) and (2).

Subdivision (b). The provision authorizing the court to require disclosure by an entity that seeks or opposes the granting of relief was deleted.

In the paragraph now designated as (1), language was added providing that groups, committees, and entities are covered by the rule only if they consist of or represent multiple creditors or equity security holders "that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another." The phrase "and, unless the court directs otherwise, every indenture trustee," was deleted.

Subdivision (b)(2) was added to specify entities that are not required to file a verified statement merely because they act in one of the designated capacities.

Subdivision (c). The authorization in subdivision (c)(2)(B) and (c)(3)(B) for the court to require the disclosure of the amount paid for a disclosable economic interest was deleted.

The requirement in subdivision (c)(2)(C) and (c)(3)(C) for disclosure of the acquisition date of each disclosable economic

interest was modified. The requirement was made applicable only to members of an unofficial group or committee that claims to represent any entity in addition to the members of the group or committee, and the date that must be disclosed was limited to the quarter and year of acquisition.

Subdivision (d). The requirement of monthly supplementation of a verified statement was modified to require supplementation whenever a covered group, committee, or entity takes a position before the court or solicits votes on the confirmation of a plan and there has been a material change in any fact disclosed in its most recently filed statement.

Subdivision (e). The provisions published as subdivision (e)(1)(B) and (C), which authorized the court to determine failures to comply with legal requirements other than those imposed by Rule 2019, were deleted.

Subdivision (e)(2), which enumerated the materials the court could examine in making a determination of noncompliance, was deleted.

Committee Note. In the discussion of the definition of “disclosable economic interest,” the specific examples of “short positions, credit default swaps, and total return swaps” were added to illustrate the breadth of the definition. A sentence was added to the discussion of subdivision (c)(2) that states that the rule does not affect the right of a party to obtain information by means of discovery or as ordered by the court under any authority outside the rule.

Other changes. Stylistic and organizational changes were made throughout the rule and Committee Note to reduce the length and clarify the meaning of the published proposal.

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## Rule 3001. Proof of Claim

1

\* \* \* \* \*

2

(c) SUPPORTING INFORMATION.

3

(1) *Claim Based on a Writing.* When a claim, or  
4 an interest in property of the debtor securing the claim, is  
5 based on a writing, the original or a duplicate shall be filed  
6 with the proof of claim. If the writing has been lost or  
7 destroyed, a statement of the circumstances of the loss or  
8 destruction shall be filed with the claim.

9

(2) *Additional Requirements in an Individual  
10 Debtor Case; Sanctions for Failure to Comply.* In a case in  
11 which the debtor is an individual:

12

(A) If, in addition to its principal amount, a  
13 claim includes interest, fees, expenses, or other charges  
14 incurred before the petition was filed, an itemized statement  
15 of the interest, fees, expenses, or charges shall be filed with  
16 the proof of claim.

17                             (B) If a security interest is claimed in the  
18                             debtor's property, a statement of the amount necessary to cure  
19                             any default as of the date of the petition shall be filed with the  
20                             proof of claim.

21                             (C) If a security interest is claimed in property  
22                             that is the debtor's principal residence, the attachment prescribed  
23                             by the appropriate Official Form shall be filed with the proof of  
24                             claim. If an escrow account has been established in connection  
25                             with the claim, an escrow account statement prepared as of the  
26                             date the petition was filed and in a form consistent with  
27                             applicable nonbankruptcy law shall be filed with the attachment  
28                             to the proof of claim.

29                             (D) If the holder of a claim fails to provide  
30                             any information required by this subdivision (c), the court  
31                             may, after notice and hearing, take either or both of the  
32                             following actions:

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41 \* \* \* \* \*

## COMMITTEE NOTE

**Subdivision (c).** Subdivision (c) is amended to prescribe with greater specificity the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the consequences of failing to provide the required information.

Existing subdivision (c) is redesignated as (c)(1).

Subdivision (c)(2) is added to require additional information to accompany proofs of claim filed in cases in which the debtor is an individual. When the holder of a claim seeks to recover – in addition to the principal amount of a debt – interest, fees, expenses, or other charges, the proof of claim must be accompanied by a statement

itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

If a claim is secured by a security interest in the property of the debtor and the debtor defaulted on the claim prior to the filing of the petition, the proof of claim must be accompanied by a statement of the amount required to cure the prepetition default.

If the claim is secured by a security interest in the debtor's principal residence, the proof of claim must be accompanied by the attachment prescribed by the appropriate Official Form. In that attachment, the holder of the claim must provide the information required by subparagraphs (A) and (B) of this paragraph (2). In addition, if an escrow account has been established in connection with the claim, an escrow account statement showing the account balance, and any amount owed, as of the date the petition was filed must be submitted in accordance with subparagraph (C). The statement must be prepared in a form consistent with the requirements of nonbankruptcy law. *See, e.g.*, 12 U.S.C. § 2601 *et seq.* (Real Estate Settlement Procedure Act). Thus the holder of the claim may provide the escrow account statement using the same form it uses outside of bankruptcy for this purpose.

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute a ground for disallowance of a claim. *See* § 502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was

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substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

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**Changes Made After Publication**

Subdivision (c)(1). The requirement that the last account statement sent to the debtor be filed with the proof of claim was deleted.

Subdivision (c)(2). In subparagraph (C), a provision was added requiring the use of the appropriate Official Form for the attachment filed by a holder of a claim secured by a security interest in a debtor's principal residence.

In subdivision (c)(2)(D), the clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court may, after notice and hearing, take either or both" of the specified actions.

Committee Note. In the discussion of subdivision (c)(2), the term "security interest" was added to the sentence that discusses the required filing of a statement of the amount necessary to cure a prepetition default.

The discussion of subdivision (c)(2)(D) was expanded to clarify that failure to provide required documentation, by itself, is not a ground for disallowance of a claim and that the court has several options in responding to a creditor's failure to provide information required by subdivision (c).

Other changes. Stylistic changes were made to the rule and the Committee Note.

**Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence**

1                   (a)     IN GENERAL. This rule applies in a chapter  
2     13 case to claims that are (1) secured by a security interest in  
3     the debtor's principal residence, and (2) provided for under  
4     § 1322(b)(5) of the Code in the debtor's plan.

5                   (b)     NOTICE OF PAYMENT CHANGES. The  
6     holder of the claim shall file and serve on the debtor, debtor's  
7     counsel, and the trustee a notice of any change in the payment  
8     amount, including any change that results from an interest rate  
9     or escrow account adjustment, no later than 21 days before a  
10    payment in the new amount is due.

11                  (c)     NOTICE OF FEES, EXPENSES, AND  
12    CHARGES. The holder of the claim shall file and serve on

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13 the debtor, debtor's counsel, and the trustee a notice itemizing  
14 all fees, expenses, or charges (1) that were incurred in  
15 connection with the claim after the bankruptcy case was filed,  
16 and (2) that the holder asserts are recoverable against the  
17 debtor or against the debtor's principal residence. The notice  
18 shall be served within 180 days after the date on which the  
19 fees, expenses, or charges are incurred.

20 (d) FORM AND CONTENT. A notice filed and  
21 served under subdivision (b) or (c) of this rule shall be  
22 prepared as prescribed by the appropriate Official Form, and  
23 filed as a supplement to the holder's proof of claim. The  
24 notice is not subject to Rule 3001(f).

25 (e) DETERMINATION OF FEES, EXPENSES,  
26 OR CHARGES. On motion of the debtor or trustee filed  
27 within one year after service of a notice under subdivision (c)  
28 of this rule, the court shall, after notice and hearing, determine  
29 whether payment of any claimed fee, expense, or charge is

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 25

30       required by the underlying agreement and applicable  
31       nonbankruptcy law to cure a default or maintain payments in  
32       accordance with § 1322(b)(5) of the Code.

33           (f)       NOTICE OF FINAL CURE PAYMENT.

34       Within 30 days after the debtor completes all payments under  
35       the plan, the trustee shall file and serve on the holder of the  
36       claim, the debtor, and debtor's counsel a notice stating that  
37       the debtor has paid in full the amount required to cure any  
38       default on the claim. The notice shall also inform the holder  
39       of its obligation to file and serve a response under subdivision  
40       (g). If the debtor contends that final cure payment has been  
41       made and all plan payments have been completed, and the  
42       trustee does not timely file and serve the notice required by  
43       this subdivision, the debtor may file and serve the notice.

44           (g)       RESPONSE TO NOTICE OF FINAL CURE  
45       PAYMENT. Within 21 days after service of the notice under

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46 subdivision (f) of this rule, the holder shall file and serve on  
47 the debtor, debtor's counsel, and the trustee a statement  
48 indicating (1) whether it agrees that the debtor has paid in full  
49 the amount required to cure the default on the claim, and (2)  
50 whether the debtor is otherwise current on all payments  
51 consistent with § 1322(b)(5) of the Code. The statement shall  
52 itemize the required cure or postpetition amounts, if any, that  
53 the holder contends remain unpaid as of the date of the  
54 statement. The statement shall be filed as a supplement to the  
55 holder's proof of claim and is not subject to Rule 3001(f).

56 (h) DETERMINATION OF FINAL CURE AND  
57 PAYMENT. On motion of the debtor or trustee filed within  
58 21 days after service of the statement under subdivision (g) of  
59 this rule, the court shall, after notice and hearing, determine  
60 whether the debtor has cured the default and paid all required  
61 postpetition amounts.

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62                     (i) FAILURE TO NOTIFY. If the holder of a claim  
63                     fails to provide any information as required by subdivision  
64                     (b), (c), or (g) of this rule, the court may, after notice and  
65                     hearing, take either or both of the following actions:  
66                         (1) preclude the holder from presenting the  
67                     omitted information, in any form, as evidence in any  
68                     contested matter or adversary proceeding in the case, unless  
69                     the court determines that the failure was substantially justified  
70                     or is harmless; or  
71                         (2) award other appropriate relief, including  
72                     reasonable expenses and attorney's fees caused by the failure.

**COMMITTEE NOTE**

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, *see* Rule 3001(c)(2), and the

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amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

**Subdivision (a).** Subdivision (a) specifies that this rule applies only in a chapter 13 case to claims secured by a security interest in the debtor's principal residence.

**Subdivision (b).** Subdivision (b) requires the holder of a claim to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

**Subdivision (c).** Subdivision (c) requires an itemized notice to be given, within 180 days of incurrence, of any postpetition fees, expenses, or charges that the holder of the claim asserts are recoverable from the debtor or against the debtor's principal residence. This might include, for example, inspection fees, late charges, or attorney's fees.

**Subdivision (d).** Subdivision (d) provides the method of giving the notice under subdivisions (b) and (c). In both instances, the holder of the claim must give notice of the change as prescribed by the appropriate Official Form. In addition to serving the debtor, debtor's counsel, and the trustee, the holder of the claim must also

file the notice on the claims register in the case as a supplement to its proof of claim. Rule 3001(f) does not apply to any notice given under subdivision (b) or (c), and therefore the notice will not constitute *prima facie* evidence of the validity and amount of the payment change or of the fee, expense, or charge.

**Subdivision (e).** Subdivision (e) permits the debtor or trustee, within a year after service of a notice under subdivision (c), to seek a determination by the court as to whether the fees, expenses, or charges set forth in the notice are required by the underlying agreement or applicable nonbankruptcy law to cure a default or maintain payments.

**Subdivision (f).** Subdivision (f) requires the trustee to issue a notice to the holder of the claim, the debtor, and the debtor's attorney within 30 days after completion of payments under the plan. The notice must (1) indicate that all amounts required to cure a default on a claim secured by the debtor's principal residence have been paid, and (2) direct the holder to comply with subdivision (g). If the trustee fails to file this notice within the required time, this subdivision also permits the debtor to file and serve the notice on the trustee and the holder of the claim.

**Subdivision (g).** Subdivision (g) governs the response of the holder of the claim to the trustee's or debtor's notice under subdivision (f). Within 21 days after service of notice of the final cure payment, the holder of the claim must file and serve a statement indicating whether the prepetition default has been fully cured and also whether the debtor is current on all payments in accordance with § 1322(b)(5) of the Code. If the holder of the claim contends that all cure payments have not been made or that the debtor is not current on other payments required by § 1322(b)(5), the response must itemize

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all amounts, other than regular future installment payments, that the holder contends are due.

**Subdivision (h).** Subdivision (h) provides a procedure for the judicial resolution of any disputes that may arise about payment of a claim secured by the debtor's principal residence. Within 21 days after the service of the statement under (g), the trustee or debtor may move for a determination by the court of whether any default has been cured and whether any other non-current obligations remain outstanding.

**Subdivision (i).** Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

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#### Changes Made After Publication

**Subdivision (a).** As part of organizational changes intended to make the rule shorter and clearer, a new subdivision (a) was inserted that specifies the applicability of the rule. Other subdivision designations were changed accordingly.

**Subdivision (b).** The timing of the notice of payment change, addressed in subdivision (a) of the published rule, was changed from 30 to 21 days before payment must be made in the new amount.

Subdivision (d). The provisions of the published rule prescribing the procedure for providing notice of payment changes and of fees, expenses, and charges were moved to subdivision (d).

Subdivision (e). As part of the organizational revision of the rule, the provision governing the resolution of disputes over claimed fees, expenses, or charges was moved to this subdivision.

Subdivision (f). The triggering event for the filing of the notice of final cure payment was changed to the debtor's completion of all payments required under the plan. A sentence was added requiring the notice to inform the holder of the mortgage claim of its obligation to file and serve a response under subdivision (g).

Subdivision (h). The caption of this subdivision (which was subdivision (f) as published), was changed to describe its content more precisely.

Subdivision (i). The clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court may, after notice and hearing, take either or both" of the specified actions.

Committee Note. A sentence was added to the first paragraph to clarify that the rule applies regardless of whether ongoing mortgage payments are made directly by the debtor or disbursed through the chapter 13 trustee. Other changes were made to the Committee Note to reflect the changes made to the rule.

Other changes. Stylistic changes were made throughout the rule and Committee Note.

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**Rule 4004. Grant or Denial of Discharge**

1

\* \* \* \* \*

## 2 (b) EXTENSION OF TIME.

3 (1) On motion of any party in interest, after notice  
4 and hearing on notice, the court may for cause extend the time  
5 to file a complaint objecting to discharge. Except as provided  
6 in subdivision (b)(2), the motion shall be filed before the  
7 time has expired.

8 (2) A motion to extend the time to object to  
9 discharge may be filed after the time for objection has expired  
10 and before discharge is granted if (A) the objection is based  
11 on facts that, if learned after the discharge, would provide a  
12 basis for revocation under § 727(d) of the Code, and (B) the  
13 movant did not have knowledge of those facts in time to  
14 permit an objection. The motion shall be filed promptly after

15        the movant discovers the facts on which the objection is  
16        based.

17                        \* \* \* \* \*

#### COMMITTEE NOTE

**Subdivision (b).** Subdivision (b) is amended to allow a party, under certain specified circumstances, to seek an extension of time to object to discharge after the time for filing has expired. This amendment addresses the situation in which there is a gap between the expiration of the time for objecting to discharge and the entry of the discharge order. If, during that period, a party discovers facts that would provide grounds for revocation of discharge, it may not be able to seek revocation under § 727(d) of the Code because the facts would have been known prior to the granting of the discharge. Furthermore, during that period the debtor may commit an act that provides a basis for both denial and revocation of the discharge. In those situations, subdivision (b)(2) allows a party to file a motion for an extension of time to object to discharge based on those facts so long as they were not known to the party before expiration of the deadline for objecting. The motion must be filed promptly after discovery of those facts.

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#### Changes Made After Publication

Following publication minor stylistic changes were made to the language of the rule, and a sentence was added to the Committee Note to clarify that the rule applies whenever the debtor commits an act during the gap period that provides a basis for both denial and revocation of the discharge.

**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**

1                    Except to the extent that relief is necessary to avoid  
2                    immediate and irreparable harm, the court shall not, within 21  
3                    days after the filing of the petition, ~~grant relief issue an order~~  
4                    granting regarding the following:  
5                    (a) an application under Rule 2014;  
6                    (b) a motion to use, sell, lease, or otherwise incur  
7                    an obligation regarding property of the estate, including a  
8                    motion to pay all or part of a claim that arose before the filing  
9                    of the petition, but not a motion under Rule 4001; ~~and or~~  
10                   (c) a motion to assume or assign an executory  
11                   contract or unexpired lease in accordance with § 365.

**COMMITTEE NOTE**

The rule is amended to clarify that it limits the timing of the entry of certain orders, but does not prevent the court from providing an effective date for such an order that may relate back to the time of the filing of the application or motion, or to some other date. For

example, while the rule prohibits, absent immediate and irreparable harm, the court from authorizing the employment of counsel during the first 21 days of a case, it does not prevent the court from providing in an order entered after expiration of the 21-day period that the relief requested in the motion or application is effective as of a date earlier than the issuance of the order. Nor does it prohibit the filing of an application or motion for relief prior to expiration of the 21-day period. Nothing in the rule prevents a professional from representing the trustee or a debtor in possession pending the approval of an application for the approval of the employment under Rule 2014.

The amendment also clarifies that the scope of the rule is limited to granting the specifically identified relief set out in the subdivisions of the rule. Deleting “regarding” from the rule clarifies that the rule does not prohibit the court from entering orders in the first 21 days of the case that may relate to the motions and applications set out in (a), (b), and (c); it is only prohibited from granting the relief requested by those motions or applications. For example, in the first 21 days of the case, the court could grant the relief requested in a motion to establish bidding procedures for the sale of property of the estate, but it could not, absent immediate and irreparable harm, grant a motion to approve the sale of property.

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#### **Changes Made After Publication**

Minor stylistic changes were made to the Committee Note following publication.

