

Changes Made After Publication and Comment. No changes were made after publication and comment.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (a)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 8027. Notice of a Mediation Procedure

If the district court or BAP has a mediation procedure applicable to bankruptcy appeals, the clerk must notify the parties promptly after docketing the appeal of:

(a) the requirements of the mediation procedure; and

(b) any effect the mediation procedure has on the time to file briefs.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

COMMITTEE NOTES ON RULES—2014

This rule is new. It requires the district or BAP clerk to advise the parties promptly after an appeal is docketed of any court mediation procedure that is applicable to bankruptcy appeals. The notice must state what the mediation requirements are and how the procedure affects the time for filing briefs.

Changes Made After Publication and Comment. No changes were made after publication and comment.

Rule 8028. Suspension of Rules in Part VIII

In the interest of expediting decision or for other cause in a particular case, the district court or BAP, or where appropriate the court of appeals, may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005, 8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

COMMITTEE NOTES ON RULES—2014

This rule is derived from former Rule 8019 and F.R.App.P. 2. To promote uniformity of practice and compliance with statutory authority, the rule includes a more extensive list of requirements that may not be suspended than either the former rule or the Federal Rules of Appellate Procedure provide. Rules governing the following matters may not be suspended:

- scope of the rules; definition of “BAP”; method of transmission;
- time for filing a notice of appeal;
- taking an appeal as of right;
- taking an appeal by leave;
- election to have an appeal heard by a district court instead of a BAP;
- certification of direct appeal to a court of appeals;
- stay pending appeal;
- corporate disclosure statement;
- sanctions for frivolous appeals and other misconduct;
- clerk’s duties on disposition of an appeal;
- stay of a district court’s or BAP’s judgment;
- local rules; and
- suspension of the Part VIII rules.

Changes Made After Publication and Comment. No changes were made after publication and comment.

PART IX—GENERAL PROVISIONS

Rule 9001. General Definitions

The definitions of words and phrases in §§101, 902, 1101, and 1502 of the Code, and the rules of construction in §102, govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) “Bankruptcy clerk” means a clerk appointed pursuant to 28 U.S.C. §156(b).

(2) “Bankruptcy Code” or “Code” means title 11 of the United States Code.

(3) “Clerk” means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court.

(4) “Court” or “judge” means the judicial officer before whom a case or proceeding is pending.

(5) “Debtor.” When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, “debtor” includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, “debtor” includes any or all of its general partners or, if designated by the court, any other person in control.

(6) “Firm” includes a partnership or professional corporation of attorneys or accountants.

(7) “Judgment” means any appealable order.

(8) “Mail” means first class, postage prepaid.

(9) “Notice provider” means any entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4).

(10) “Regular associate” means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(11) “Trustee” includes a debtor in possession in a chapter 11 case.

(12) “United States trustee” includes an assistant United States trustee and any designee of the United States trustee.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2010, eff. Dec. 1, 2010.)

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The terms “bankruptcy clerk” and “clerk” have been defined to reflect that unless otherwise stated, for the purpose of these rules, the terms are meant to identify the court officer for the bankruptcy records. If a bankruptcy clerk is appointed, all filings are made with the bankruptcy clerk. If one has not been appointed, all filings are with the clerk of the district court. Rule 5005.

The rule is also amended to include a definition of “court or judge”. Since a case or proceeding may be before a bankruptcy judge or a judge of the district court, “court or judge” is defined to mean the judicial officer before whom the case or proceeding is pending.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Section 582 of title 28 provides that the Attorney General may appoint one or more assistant United States trustees in any region when the public interest so requires. This rule is amended to clarify that an assistant United States trustee, as well as any designee of the United States trustee, is included within the meaning of “United States trustee” in the rules.

COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to add the definition of a notice provider and to renumber the final three definitions in

the rule. A notice provider is an entity approved by the Administrative Office of the United States Courts to enter into agreements with entities to give notice to those entities in the form and manner agreed to by those parties. The new definition supports the amendment to Rule 2002(g)(4) that authorizes a notice provider to give notices under Rule 2002.

Many entities conduct business on a national scale and receive vast numbers of notices in bankruptcy cases throughout the country. Those entities can agree with a notice provider to receive their notices in a form and at an address or addresses that the creditor and notice provider agree upon. There are processes currently in use that provide substantial assurance that notices are not misdirected. Any notice provider would have to demonstrate to the Administrative Office of the United States Courts that it could provide the service in a manner that ensures the proper delivery of notice to creditors. Once the Administrative Office of the United States Courts approves the notice provider to enter into agreements with creditors, the notice provider and other entities can establish the relationship that will govern the delivery of notices in cases as provided in Rule 2002(g)(4).

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

COMMITTEE NOTES ON RULES—2010 AMENDMENT

The rule is amended to add §1502 of the Code to the list of definitional provisions that are applicable to the Rules. That section was added to the Code by the 2005 amendments.

Changes Made After Publication. No changes since publication.

REFERENCES IN TEXT

The Bankruptcy Act of 1898 as amended, referred to in pars. (1) and (2), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. Sections 1(10) and 2a of this Act were classified to sections 1(10) and 11(a), respectively, of former Title 11. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under the Code

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) “Action” or “civil action” means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) “Appeal” means an appeal as provided by 28 U.S.C. §158.

(3) “Clerk” or “clerk of the district court” means the court officer responsible for the bankruptcy records in the district.

(4) “District Court,” “trial court,” “court,” “district judge,” or “judge” means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge.

(5) “Judgment” includes any order appealable to an appellate court.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

This rule is revised to include the words “district judge” in anticipation of amendments to the Federal Rules of Civil Procedure.

Rule 9003. Prohibition of Ex Parte Contacts

(a) GENERAL PROHIBITION. Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.

(b) UNITED STATES TRUSTEE. Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule regulates the actions of parties in interest and their attorneys or others employed by parties in interest. This regulation of the conduct of parties in interest and their representative is designed to insure that the bankruptcy system operates fairly and that no appearance of unfairness is created. See H. Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977).

This rule is not a substitute for or limitation of any applicable canon of professional responsibility or judicial conduct. See, e.g., Canon 7, EC7-35, Disciplinary Rule 7-110(B) of the Code of Professional Responsibility: “Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party;” and Canon 3A(4) of the Code of Judicial Conduct: “A judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.”

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

This rule is amended to apply to both the bankruptcy judges and the district judges of the district.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (a) is amended to extend to examiners the prohibition on ex parte meetings and communications with the court.

Subdivision (b) is derived from Rule X-1010.

Rule 9004. General Requirements of Form

(a) LEGIBILITY; ABBREVIATIONS. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) CAPTION. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.