AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

107th Congress, 1st Session – – – – – – – – – – – – – – House Document 107–60

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURES

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

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



APRIL 24, 2001.—Referred to the Committee on the Judiciary and ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

71–986 WASHINGTON : 2001

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 23, 2001.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

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

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

Sincerely,

WILLIAM H. REHNQUIST.

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 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022.

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

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2001, 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.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1007. Lists, Schedules and Statements; Time Limits

* * * * *

(m) INFANTS AND INCOMPETENT PERSONS. If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).

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

* * * * *

(c) CONTENT OF NOTICE.

* * * * *

(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entities that would be subject to the injunction.

* * * * *

(g) ADDRESSING NOTICES.

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security

holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision —

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) If a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or

schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

* * * * *

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

* * * * *

(c) INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

* * * * *

(f) NOTICE AND TRANSMISSION OF DOCUMENTS TO ENTITIES SUBJECT TO AN INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with:

(1) at least 25 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and

(2) to the extent feasible, a copy of the plan and disclosure statement.

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case

* * * * *

(c) ORDER OF CONFIRMATION.

(1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other parties in

interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

* * * * *

Rule 9006. Time

* * * * *

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5(b)(2)(C) OR (D) F. R. CIV. P. When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule

5(b)(2)(C) or (D) F. R. Civ. P., three days shall be added to the prescribed period.

* * * * *

Rule 9020. Contempt Proceedings

Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.

Rule 9022. Notice of Judgment or Order

(a) JUDGMENT OR ORDER OF BANKRUPTCY JUDGE. Immediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in Rule 5(b) F. R. Civ. P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect

the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

* * * * *

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

October 20, 2000

MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I have the honor to transmit herewith for consideration of the Court proposed amendments to Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022 of the Federal Rules of Bankruptcy Procedure. The Judicial Conference recommends that these changes be approved by the Court and transmitted to the Congress pursuant to law.

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

Leonidas Ralph Mecham

Attachments

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

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

* * * * *

AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022, and Official Form 7 with a recommendation that they be approved and transmitted to the Judicial Conference. The amendments were circulated to the bench and bar for comment in August 1999. The scheduled public hearing was canceled because the single request to testify was withdrawn.

Under the proposed amendment to Rule 1007 (Lists, Schedules, and Statements; Time Limits), a debtor who knows that a creditor is an infant or incompetent person would be required to include in the list of creditors and schedules the name, address, and legal relationship of any representative of that creditor.

The proposed amendments to Rule 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee) would require that a party who is entitled to notice of a plan confirmation hearing be given adequate notice of any injunction that would enjoin conduct not otherwise enjoined by the Bankruptcy Code. The amendments also clarify provisions governing mailing addresses of creditors and indenture trustees.

Rule 3016 (Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases) would be amended to require adequate notice of a proposed

injunction to entities whose conduct would be enjoined under a plan rather than by the Bankruptcy Code.

The proposed amendment to Rule 3017 (Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases) would require a court to consider prescribing procedures that would provide adequate notice of an injunction to be issued under a proposed plan, rather than by operation of the Bankruptcy Code, to entities who are neither creditors nor equity security holders.

Rule 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case) would be amended to require that an order of confirmation describe in reasonable detail the terms, scope, and conditions of an injunction issued under a plan, enjoining conduct not otherwise enjoined by the Bankruptcy Code.

The proposed amendment of Rule 9006(f) (Time) would provide a party with an additional three days to respond to a paper served by electronic means.

The proposed amendments to Rule 9020 (Contempt Proceedings) would apply the procedures governing contested matters to a motion filed by an United States trustee or a party in interest for an order of contempt. The amendment only sets out a procedure for handling a motion for contempt; it does not address the existence of the power of a bankruptcy court to issue a contempt order.

Rule 9022 (Notice of Judgment or Order) would be amended to permit the clerk of court to use electronic means to serve notice of entry of an order or judgment on a party who has consented to such service.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Bankruptcy Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022 and transmit them to the Supreme Court for its consideration with the

recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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

ANTHONY J. SCIRICA
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

WILL L. GARWOOD
APPELLATE RULES

ADRIAN G. DUPLANTIER
BANKRUPTCY RULES

PAUL V. NIEMEYER
CIVIL RULES

W. EUGENE DAVIS
CRIMINAL RULES

MILTON I. SHADUR
EVIDENCE RULES

TO: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Adrian G. Duplantier, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 11, 2000

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 9-10, 2000, in Key Largo, Florida. The Advisory Committee considered public comments regarding proposed amendments to the Bankruptcy Rules that were published in August 1999.

The proposed amendments published in 1999, include revisions to eight Bankruptcy Rules (Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022). The Advisory Committee received thirteen written comments on the proposed rules. Several of the comments were offered on behalf of groups, including the Bankruptcy Judges of the Northern District of Illinois, and the Chief Bankruptcy Judges of the Ninth Circuit. One person initially requested an opportunity to appear at a public hearing on the proposed amendments, but he later withdrew that request and rested on his written submission. The Advisory Committee considered the comments at its March 2000 meeting and approved each of the proposed amendments to the Rules, and will present them to the Standing Committee at its June 2000 meeting for final approval and transmission to the Judicial Conference. The Advisory Committee also will present amendments to Official Form 7 (Statement of Financial Affairs) to the Standing Committee for final approval and transmission to the Judicial Conference. The proposed amendments to this Form were published in August 1998 and the Advisory Committee considered the comments at its March 1999 and September 1999 meetings.

* * * * *

II Action Items

A. Proposed Amendments to Bankruptcy Rules 1007, 2002(c)(3), 2002(g), 3016, 3017, 3020, 9006(f)[1], 9020, and 9022, and Official Form 7 Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 1999, and a public hearing on the preliminary draft was scheduled for January 18, 2000. The public hearing was canceled when the only person submitting comments on the proposals who requested to appear at the scheduled hearing withdrew that request.

There were thirteen comments received regarding the proposed amendments to the rules. The comments contained in these submissions are summarized on a rule-by-rule basis following the text of each rule in the GAP Report set out below. The Advisory Committee reviewed these comments, and, as a result, it made several revisions to the published draft. The post-publication revisions are identified in the GAP Report.

The proposed amendments to Official Form 7 were published for comment in August 1998. The Advisory Committee received six comments on the proposed amendments to the form, and those comments are summarized following the text of the form.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1007 is amended so that, if the debtor knows that a creditor is an infant or incompetent person, the debtor will be required to include in the list of creditors and schedules the name, address, and legal relationship of any representative upon whom process would be served in an adversary proceeding against the infant or incompetent person. This information will enable the clerk to mail notices required under Rule 2002 to the appropriate representative.

---

[1] Rule 9006(f) extends the three day "mail rule" to electronic service of documents. Proposed amendments to Civil Rule 5(b), on the other hand, do not provide additional time when service is accomplished electronically. The Advisory Committee considered the public comments and concluded that retention of the additional three days is preferable to the provisions in proposed Rule 5(b) F. R. Civ. P. The Advisory Committee, however, also believes strongly that the bankruptcy and civil rules should be consistent. [After reviewing public comments, the Advisory Committee on Civil Rules approved extending the three-day mail rule to service of papers by electronic means in civil cases.]

(b) Rule 2002(c) is amended to assure that parties entitled to notice of a hearing on confirmation of a plan are given adequate notice of any injunction included in the plan that would enjoin conduct not otherwise enjoined by operation of the Bankruptcy Code.

(c) Rule 2002(g) is amended to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a different mailing address, the last paper filed determines the proper address, and that a request designating a mailing address is effective only with respect to a particular case. The amendments also clarify that a filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A new paragraph has been added to assure that notices to an infant or incompetent person are mailed to the person's legal representative identified in the debtor's schedules or list of creditors.

(d) Rule 3016 is amended to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Bankruptcy Code, are given adequate notice of the proposed injunction. The amendment would require that the plan and disclosure statement describe in specific and conspicuous language all acts to be enjoined and to identify the entities that would be subject to the injunction.

(e) Rule 3017 is amended to assure that entities whose conduct would be enjoined under a plan, but who would not ordinarily receive copies of the plan and disclosure statement or information regarding the confirmation hearing because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction, the confirmation hearing, and the deadline for objecting to confirmation of the plan.

(f) Rule 3020 is amended so that, if a plan contains an injunction against conduct not otherwise enjoined under the Code, the order confirming the plan must describe in detail all acts enjoined and identify the entities subject to the injunction. The amendment also requires that notice of entry of the order of confirmation be mailed to all known entities subject to the injunction.

(g) Rule 9006(f) is amended to expand the 3-day rule so that it will apply to any method of service, including service by electronic means, authorized under proposed amendments to Civil Rule 5(b), other than service by personal delivery.

(h) Rule 9020 is amended to delete provisions that delay for 10 days the effectiveness of an order of civil contempt issued by a bankruptcy judge and that render the order subject to *de novo* review by the district court. Other procedural provisions in the rule are replaced with a statement that a motion for an order of contempt made by the United States trustee or a party in interest is governed by Rule 9014 (contested matters).

(i) Rule 9022(a) is amended to authorize the clerk to serve notice of entry of a judgment or order of a bankruptcy judge by any method of service, including service by electronic means, permitted under the proposed amendments to Civil Rule 5(b).

3. *Text of Proposed Amendments to Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022.*

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1007. Lists, Schedules and Statements; Time Limits

* * * * *

(m) *Infants and Incompetent Persons.* If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).

COMMITTEE NOTE

Subdivision (m) is added to enable the person required to mail notices under Rule 2002 to mail them to the appropriate guardian or other representative when the debtor knows that a creditor or other person listed is an infant or incompetent person.

---

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

The proper mailing address of the representative is determined in accordance with Rule 7004(b)(2), which requires mailing to the person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made.

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

* * * * *

(c) *Content of Notice.*

* * * * *

(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entities that would be subject to the injunction.

* * * * *

~~(g) *Addresses of Notices.* All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as such entity or an authorized agent may direct in a filed request; otherwise, to the address shown in the list of creditors or the schedule, whichever is filed later. If a different address is stated in a proof of claim duly filed, that address shall be used unless a notice of no dividend has been given.~~

(g) *Addressing Notices.*

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision —

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) If a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the

representative included in the list or schedules and to the name and address designated in the request or proof of claim.

* * * * *

COMMITTEE NOTE

Subdivision (c)(3) is added to assure that parties given notice of a hearing to consider confirmation of a plan under subdivision (b) are given adequate notice of an injunction provided for in the plan if it would enjoin conduct that is not otherwise enjoined by operation of the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The notice requirement of subdivision (c)(3) is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 2002(c)(3) would not apply because that conduct would be enjoined under § 524(a)(2) upon the debtor's discharge. But if a plan provides that creditors will be enjoined from asserting claims against persons who are not debtors in the case, the notice of the confirmation

hearing must include the information required under Rule 2002(c)(3) because that conduct would not be enjoined by operation of the Code. *See* § 524(e).

The requirement that the notice identify the entities that would be subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the notice may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient for the notice to identify the entities as "all creditors of the debtor" and for the notice to be published in a manner that satisfies due process requirements.

Subdivision (g) has been revised to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a mailing address, the last paper filed determines the proper address. The amendments also clarify that a request designating a mailing address is effective only with respect to a particular case.

Under Rule 2002(g), a duly filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A duly filed proof of interest is considered a request designating a mailing address of an equity security holder.

Rule 2002(g)(3) is added to assure that notices to an infant or incompetent person under this rule are mailed to the appropriate guardian or other legal representative. Under Rule 1007(m), if the debtor knows that a creditor is an infant or incompetent person, the debtor is required to include in the list and schedule of creditors the name and address of the person upon whom process would be served

in an adversary proceeding in accordance with Rule 7004(b)(2). If the infant or incompetent person, or another person, files a request or proof of claim designating a different name and mailing address, the notices would have to be mailed to both names and addresses until the court resolved the issue as to the proper mailing address.

The other amendments to Rule 2002(g) are stylistic.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

In Rule 2002(c)(3), the word "highlighted" was replaced with "underlined" because highlighted documents are difficult to scan electronically for inclusion in the clerks' files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules.

In Rule 2002(g), no changes were made.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality ~~and~~ or Chapter 11 Reorganization ~~Cases~~ Case

* * * * *

(c) *Injunction Under a Plan.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

COMMITTEE NOTE

Subdivision (c) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, are given adequate notice of the proposed injunction. The validity and effect of any injunction are substantive law matters that are beyond the scope of these rules.

Specific and conspicuous language is not necessary if the injunction contained in the plan is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 3016(c) would not apply because that conduct would be enjoined nonetheless under § 524(a)(2). But if a plan provides that

creditors will be permanently enjoined from asserting claims against persons who are not debtors in the case, the plan and disclosure statement must highlight the injunctive language and comply with the requirements of Rule 3016(c). *See* § 524(e).

The requirement in this rule that the plan and disclosure statement identify the entities that would be subject to the injunction requires reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the plan and disclosure statement may describe them by class or category. For example, it may be sufficient to identify the subjects of the injunction as "all creditors of the debtor."

CHANGES MADE AFTER PUBLICATION AND COMMENTS

The word "highlighted" in the parenthesis was replaced with "underlined" because highlighted documents are difficult to scan electronically for inclusion in the clerks' files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules. Other stylistic changes were made to the Committee Note.

Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality ~~and~~ or Chapter 11 Reorganization ~~Cases~~ Case

* * * * *

(f) *Notice and Transmission of Documents to Entities Subject to an Injunction Under a Plan.* If a plan provides for

an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with:

(1) at least 25 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and

(2) to the extent feasible, a copy of the plan and disclosure statement.

COMMITTEE NOTE

Subdivision (f) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, and who will not receive the documents listed in subdivision (d) because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction. It does not address any substantive law issues relating to the validity or effect of any injunction provided under a plan, or any due process or other constitutional issues relating to notice. These issues are beyond the scope of these rules and are left for judicial determination.

This rule recognizes the need for adequate notice to subjects of an injunction, but that reasonable flexibility under the circumstances may be required. If a known and identifiable entity would be subject to the injunction, and the notice, plan, and disclosure statement could be mailed to that entity, the court should require that they be mailed at the same time that the plan, disclosure statement and related documents are mailed to creditors under Rule 3017(d). If mailing notices and other documents is not feasible because the entities subject to the injunction are described in the plan and disclosure statement by class or category and they cannot be identified individually by name and address, the court may require that notice under Rule 3017(f)(1) be published.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments since publication. The Committee Note was revised to put in a more prominent position the statement that the rule does not address related substantive law issues which are beyond the scope of the rules.

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

* * * * *

(c) *Order of Confirmation.*

(1) The order of confirmation shall conform to the appropriate Official Form ~~and~~ . If the plan provides for an injunction against conduct not otherwise enjoined under

the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation ~~notice of entry thereof~~ shall be mailed promptly ~~as provided in Rule 2002(f)~~ to the debtor, the trustee, creditors, equity security holders, ~~and~~ other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

* * * * *

COMMITTEE NOTE

Subdivision (c) is amended to provide notice to an entity subject to an injunction provided for in a plan against conduct not otherwise enjoined by operation of the Code. This requirement is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The requirement that the order of confirmation identify the entities subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the order may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient to identify the entities as "all creditors of the debtor."

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of injunctions provided for in plans is beyond the scope of the rules.

Rule 9006. Time

* * * * *

(f) *Additional Time after Service by Mail or Under Rule 5(b)(2)(C) or (D) F. R. Civ. P.* When there is a right or

requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule 5(b)(2)(C) or (D) F. R. Civ. P., three days shall be added to the prescribed period.

* * * * *

COMMITTEE NOTE

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means — or any other means not otherwise authorized under Rule 5(b) — if consent is obtained from the person served. The amendment to Rule 9006(f) is intended to extend the three-day "mail rule" to service under Rule 5(b)(2)(D), including service by electronic means. The three-day rule also will apply to service under Rule 5(b)(2)(C) F. R. Civ. P. when the person served has no known address and the paper is served by leaving a copy with the clerk of the court.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made.

Rule 9020. Contempt Proceedings

Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.

~~(a) *Contempt Committed in Presence of Bankruptcy Judge.* Contempt committed in the presence of a bankruptcy judge may be determined summarily by a bankruptcy judge. The order of contempt shall recite the facts and shall be signed by the bankruptcy judge and entered of record.~~

~~(b) *Other Contempt.* Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the~~

~~court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.~~

~~(c) *Service and Effective Date of Order; Review.* The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.~~

~~(d) *Right to Jury Trial.* Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.~~

COMMITTEE NOTE

The amendments to this rule cover a motion for an order of contempt filed by the United States trustee or a party in interest. This rule, as amended, does not address a contempt proceeding initiated by the court sua sponte.

Whether the court is acting on motion under this rule or is acting sua sponte, these amendments are not intended to extend, limit, or otherwise affect either the contempt power of a bankruptcy judge or the role of the district judge regarding contempt orders. Issues relating to the contempt power of bankruptcy judges are substantive and are left to statutory and judicial development, rather than procedural rules.

This rule, as amended in 1987, delayed for ten days from service the effectiveness of a bankruptcy judge's order of contempt and rendered the order subject to de novo review by the district court. These limitations on contempt orders were added to the rule in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which provides that bankruptcy judges are judicial officers of the district court, but does not specifically mention contempt power. *See* 28 U.S.C. § 151. As explained in the committee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed concerning the authority of a bankruptcy judge to punish for either civil or criminal contempt under the 1984 Act and, therefore, the rule as amended in 1987

"recognizes that bankruptcy judges may not have the power to punish for contempt." Committee Note to 1987 Amendments to Rule 9020.

Since 1987, several courts of appeals have held that bankruptcy judges have the power to issue civil contempt orders. *See, e.g.*, Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d 609 (5th Cir. 1997); In re Rainbow Magazine, Inc., 77 F.3d 278 (9th Cir. 1996). Several courts have distinguished between a bankruptcy judge's civil contempt power and criminal contempt power. *See, e.g.*, Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d at 613, n. 3 ("[a]lthough we find that bankruptcy judge's [sic] can find a party in civil contempt, we must point out that bankruptcy courts lack the power to hold persons in criminal contempt."). For other decisions regarding criminal contempt power, *see, e.g.*, In re Ragar, 3 F.3d 1174 (8th Cir. 1993); Matter of Hipp, Inc., 895 F.2d 1503 (5th Cir. 1990). To the extent that Rule 9020, as amended in 1987, delayed the effectiveness of civil contempt orders and required de novo review by the district court, the rule may have been unnecessarily restrictive in view of judicial decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt.

Subdivision (d), which provides that the rule shall not be construed to impair the right to trial by jury, is deleted as unnecessary and is not intended to deprive any party of the right to a jury trial when it otherwise exists.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments. Stylistic changes were made to the Committee Note.

Rule 9022. Notice of Judgment or Order

(a) *Judgment or Order of Bankruptcy Judge.* Immediately on the entry of a judgment or order the clerk shall serve a notice of entry ~~by mail~~ in the manner provided ~~by Rule 7005~~ in Rule 5(b) F. R. Civ. P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

* * * * *

COMMITTEE NOTE

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means — or any other means not otherwise

authorized under Rule 5(b) — if consent is obtained from the person served. The amendment to Rule 9022(a) authorizes the clerk to serve notice of entry of a judgment or order by electronic means if the person served consents, or to use any other means of service authorized under Rule 5(b), including service by mail. This amendment conforms to the amendments made to Rule 77(d) F.R. Civ. P.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made.

○