

AMENDMENTS TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME
COURT OF THE UNITED STATES

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



APRIL 28, 2004.—Referred to the Committee on the Judiciary and ordered
to be printed

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WASHINGTON : 2004

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 26, 2004.

Hon. J. DENNIS HASTERT,
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,

WILLIAM H. REHNQUIST,
Chief Justice.

APR 26 2004

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 1011, 2002, and 9014.

[See infra., pp. — — —.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2004, 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 1011. Responsive Pleading or Motion in
Involuntary and Ancillary Cases**

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition or a party in interest to a petition commencing a case ancillary to a foreign proceeding may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

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

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(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this

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rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose

a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

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Rule 9014. Contested Matters

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(c) APPLICATION OF PART VII RULES. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting before scheduling

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conference/discovery plan). An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

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JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

November 17, 2003

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 1011, 2002, and 9014 of the Federal Rules of Bankruptcy Procedure. The Judicial Conference recommends that these amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering these proposed revisions, I am 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.

A handwritten signature in cursive script, reading "Leonidas Ralph Mecham".

Leonidas Ralph Mecham
Secretary

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 1011, 2002, and 9014 and new Official Form 21 with a recommendation that they be approved and transmitted to the Judicial Conference. The amendment to Rule 9014 was circulated to the bench and bar for comment in August 2002. The scheduled public hearing on the proposed rule amendment was canceled because no one asked to testify. The amendments to Rules 1011 and 2002 and new Official Form 21 are technical or conforming and were not published for public comment.

The proposed amendment to Rule 9014 exempts “contested matters” from the mandatory disclosure provisions of Rule 26 of the Federal Rules of Civil Procedure, which apply to bankruptcy proceedings in accordance with Rule 7026. Contested matters often involve time-sensitive matters. They typically are resolved well before the time when disclosure is required under Rule 26, rendering the mandatory disclosure provisions ineffective and counterproductive. The mandatory disclosure requirements, however, continue to apply to adversary proceedings and may apply in individual contested matters if directed by the court or the judge.

The proposed amendment to Rule 1011 changes the reference to Rule 1004 to conform with a recent amendment of that rule. Rule 2002 would be amended to specify that copies of

notices to creditors in a chapter 11 case must be sent to the address for the Internal Revenue Service set out in the Rule 5003(e) mailing-address register.

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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 1011, 2002, and 9014 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

ANTHONY J. SCIRICA
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CIVIL RULES

EDWARD E. CARNES
CRIMINAL RULES

JERRY E. SMITH
EVIDENCE RULES

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

FROM: Honorable A. Thomas Small, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 27, 2003

RE: Report of the Advisory Committee on Bankruptcy
Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on April 3-4, 2003, in Longboat Key, Florida. The Advisory Committee considered public comments regarding a proposed amendment to Bankruptcy Rule 9014 that was published in August 2002. The Advisory Committee received only four comments on the proposed amendment to the Rule. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 24, 2003, the hearing was canceled. The Advisory

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Committee also considered technical amendments to Bankruptcy Rules 1011 and 2002(j) as well as a new Official Form for the submission of a debtor's social security number as required by amendments to Bankruptcy Rules 1007 and 2002 that will become effective on December 1, 2003.

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The Advisory Committee considered the written comments on the proposed amendment to Bankruptcy Rule 9014, and approved the proposal and will present it to the Standing Committee at its June 2003 meeting for final approval and transmission to the Judicial Conference. The amendment to Bankruptcy Rule 9014 is set out in Part II A of this Report.

The amendments to Bankruptcy Rules 1011 and 2002(j) are technical and are submitted to the Standing Committee without prior publication and comment. The amendment to Rule 1011 simply conforms a cross reference in that rule to reflect a recent amendment to another Bankruptcy Rule. The amendment to Rule 2002(j) changes the address for mailing notices to the Internal Revenue Service because of a change in the structure of the Service. A new Official Form 21 is proposed to implement the restrictions on the publication of a debtor's social security number. The amendments to Bankruptcy Rules 1011 and 2002(j) and Official Form 21 are set out in Part II B of this Report.

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II Action Items

A. Proposed Amendments to Bankruptcy Rule 9014
Submitted for Final Approval by the Standing Committee
and Submission to the Judicial Conference.

1. *Public Comment.*

The preliminary draft of the proposed amendment to Bankruptcy Rule 9014 was published for comment in August 2002. A public hearing on the preliminary draft was scheduled for January 24, 2003. There were no requests to appear at the hearing. There were four comments on the proposal, and they are summarized below. The Advisory Committee reviewed these comments and approved the amendment to the rule as published.

2. *Synopsis of Proposed Amendment*

Rule 9014 is amended to limit the applicability of the mandatory disclosure provisions of Rule 26 of the Federal Rules of Civil Procedure made applicable in contested matters in bankruptcy cases by Bankruptcy Rule 7026. Contested matters typically are resolved more quickly than the time that would elapse under the normal application of the mandatory disclosure provisions of Fed. R. Civ. P. 26. Those disclosure requirements continue to apply in adversary proceedings, and the court can order that they apply in a particular contested matter.

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*B. Rules and Official Form Amendments Proposed
Without Public Comment.*

The Advisory Committee considered technical amendments to Bankruptcy Rules 1011 and 2002(j). The Advisory Committee approved the amendments to the rules and submits that the nature of these amendments is such that there is no need for publication and comment on the proposed amendments. The Advisory Committee recommends that the Standing Committee approve the amendments for submission to the Judicial Conference.

The Advisory Committee also considered a new Official Form 21. This form implements the amendment to Rule 1007(f) that becomes effective on December 1, 2003, in the absence of Congressional action. The form provides the mechanism for the debtor to submit a social security number to the court so that creditors and other parties in interest can identify the debtor while maintaining the debtor's privacy. The Advisory Committee recommends that the Standing Committee approve the Official Form for submission to the Judicial Conference with an effective date of December 1, 2003.

1. *Synopsis of Proposed Rules Amendments and New
Official Form:*

- (a) Rule 1011 is amended to delete a cross reference to Rule 1004(b). The cross reference should be to Rule 1004 because that rule was amended recently such that the rule no longer includes any subdivisions.

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(b) Rule 2002(j) is amended to reflect the restructuring of the Internal Revenue Service. The Service no longer includes a District Director, so the rule is amended to provide that notices should be mailed to the address set out by the Service in the register maintained by the clerk of the Bankruptcy Court.

(c) Official Form 21 is a new form that a debtor must submit to the court setting out the debtor's social security number. The Form implements the recently approved amendments to Bankruptcy Rule 1007 adopted to further the Judicial Conference's privacy protection policy.

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(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition or a party in interest to a petition commencing a case ancillary to a foreign proceeding may contest the petition. In the case of a petition against a partnership under Rule 1004 (b), a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

* * * * *

The amendment to Rule 1004 that became effective on December 1, 2002, deleted former subdivision (a) of that rule leaving only the provisions relating to involuntary petitions against partnerships. The rule no longer includes subdivisions. Therefore, this technical amendment changes the reference to Rule 1004(b) to Rule 1004.

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

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

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2 (j) NOTICES TO THE UNITED STATES. Copies of
3 notices required to be mailed to all creditors under this rule
4 shall be mailed (1) in a chapter 11 reorganization case, to the
5 Securities and Exchange Commission at any place the
6 Commission designates, if the Commission has filed either a
7 notice of appearance in the case or a written request to receive
8 notices; (2) in a commodity broker case, to the Commodity
9 Futures Trading Commission at Washington, D.C.; (3) in a
10 chapter 11 case, to the ~~District Director of Internal Revenue~~
11 Service at its address set out in the register maintained under
12 Rule 5003(e) for the district in which the case is pending; (4)
13 if the papers in the case disclose a debt to the United States
14 other than for taxes, to the United States attorney for the
15 district in which the case is pending and to the department,

20 * * * * *

The rule is amended to reflect that the structure of the Internal Revenue Service no longer includes a District Director. Thus, rather than sending notice to the District Director, the rule now requires that the notices be sent to the location designated by the Service and set out in the register of addresses maintained by the clerk under Rule 5003(e). The other change is stylistic.

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(c) APPLICATION OF PART VII RULES. Except as
otherwise provided in this rule, and unless ~~Unless~~ the court
directs otherwise, the following rules shall apply: 7009, 7017,
7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056,
7064, 7069, and 7071. The following subdivisions of Fed. R.

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7 Civ. P. 26, as incorporated by Rule 7026, shall not apply in a
8 contested matter unless the court directs otherwise: 26(a)(1)
9 (mandatory disclosure), 26(a)(2) (disclosures regarding expert
10 testimony) and 26(a)(3) (additional pre-trial disclosure), and
11 26(f) (mandatory meeting before scheduling
12 conference/discovery plan). An entity that desires to
13 perpetuate testimony may proceed in the same manner as
14 provided in Rule 7027 for the taking of a deposition before an
15 adversary proceeding. The court may at any stage in a
16 particular matter direct that one or more of the other rules in
17 Part VII shall apply. The court shall give the parties notice of
18 any order issued under this paragraph to afford them a
19 reasonable opportunity to comply with the procedures
20 prescribed by the order.

21 * * * * *

COMMITTEE NOTE

The rule is amended to provide that the mandatory disclosure requirements of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in contested matters. The typically short time between the commencement and resolution of most contested matters makes the mandatory disclosure provisions of Rule 26 ineffective. Nevertheless, the court may by local rule or by order in a particular case provide that these provisions of the rule apply in a contested matter.

Changes Made After Publication. No changes since publication.