

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

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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.

The Advisory Committee approved a preliminary draft of proposed amendments to Bankruptcy Rules 1004, 2004, 2014, 2015, and 9027, and new Bankruptcy Rule 1004.1. The Advisory Committee also approved a preliminary draft of proposed amendments to Official Form 1 (Voluntary Petition), and will present the Form and Rules proposals to the Standing Committee at its June 2000 meeting with a request that they be published for comment.

The Advisory Committee also discussed whether to support a proposal to require or encourage local courts to publish their local rules on the Internet accessible from a link from the website of the Administrative Office of the United States Courts. The discussion noted that local rules often are effectively unpublished notwithstanding efforts to improve access to those rules. The Advisory Committee then approved a resolution to 1) urge each bankruptcy court to establish and maintain a website; 2) encourage each court to post its local rules on the website; and 3) establish a local rules link from the Administrative Office website to each local court's website.

II Action Items

A. Proposed Amendments to Bankruptcy Rules 1007, 2002(c)(3), 2002(g), 3016, 3017, 3020, 9006(f)¹, 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.

¹ Rule 9006(f) extends the three day "mail rule" to electronic service of documents. Civil Rule 5(b), on the other hand, does 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.

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.

(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

7 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.

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.

Public Comment on Proposed Amendments to Rule 1007(m):

- (1) Karen Eddy (Clerk, Bankr. S.D. Fl.) suggested that the Rule set out a format for submitting the address on the service matrix. She also proposed that the Official Forms be amended to include a column for listing a guardian or representative of the creditor.

GAP Report on Rule 1007(m). No changes since publication.

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

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2 (c) *Content of Notice.*

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4 (3) Notice of Hearing on Confirmation When Plan

5 Provides for an Injunction. If a plan provides for an injunction

6 against conduct not otherwise enjoined under the Code, the notice

7 required under Rule 2002(b)(2) shall:

8 (A) include in conspicuous language (bold, italic,

11 or underlined text) a statement that the plan proposes an
12 injunction;

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

14 and

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

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

25 (g) *Addressing Notices.*

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

31 (A) a proof of claim filed by a creditor or
32 indenture trustee that designates a mailing address

31 constitutes a filed request to mail notices to that address,
32 unless a notice of no dividend has been given under Rule
33 2002(e) and a later notice of possible dividend under Rule
34 3002(c)(5) has not been given; and

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

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

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

53 designated in the request or proof of claim.

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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.

Public Comment on Proposed Amendments to Rule 2002(c)(3):

- (1) Jack E. Horsley, Esq. (Mattoon, Il.) urged that the notice include a statement of the reason why entities would be subject to an injunction.
- (2) Matthew E. Wilkins, Esq. (Detroit, Mi.) supports the notion of increased notice to parties that are subject to injunctions, but he asserts that the proposed amendments will encourage the issuance of injunctions not authorized by the Bankruptcy Code.
- (3) Hon. S. Martin Teel, Jr. (Bankr. D.D.C.) supports improving notice to parties subject to injunctions, but suggests that the rule require the title of the notice to state that the plan includes an injunction. He also suggests that the rule include a remedy in the event of a failure to comply with its provisions.
- (4) Hon. Susan Pierson Sonderby (Bankr. N.D. Il.), on behalf of the Bankruptcy Judges for the Northern District of Illinois, supports the proposed amendments.
- (5) Hon. Louise De Carl Adler (Bankr. S.D. Cal.), on behalf of the Conference of Chief Bankruptcy Judges of the Ninth Circuit, expressed concern that the amendments go beyond establishing procedural protection and may engender disputes

GAP Report on Rule 2002(c)(3). 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.

Public Comment on Proposed Amendments to Rule 2002(g):

- (1) Karen Eddy (Clerk, Bankr. S.D. Fl.) proposed that the Rule be clarified to give greater assistance to clerks who receive multiple requests for service by or on behalf of the same creditor. She suggested that a national form “Request for Service” be developed.
- (2) Mark A. Cronin, Esq. (Fort Washington, Pa.) finds the proposed amendments preferable, and joins with Raymond P. Bell, Jr. (Bankruptcy Manager, Fleet Credit Card Services, L.P., Horsham, Pa.) to suggest that claims in all cases be “deemed allowed” without the need for filing proof of the claim unless the claim is listed as disputed, contingent, or unliquidated.

GAP Report on Proposed Amendments to Rule 2002(g). No changes since publication.

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

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(c) *Injunction Under a Plan.* If a plan provides for an injunction

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against conduct not otherwise enjoined under the Code, the plan and

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disclosure statement shall describe in specific and conspicuous language (bold,

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italic, or underlined text) all acts to be enjoined and identify the entities that

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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.”

Public Comment on Proposed Amendments to Rule 3016:

- (1) Jack E. Horsley, Esq. (Mattoon, Il.) believes that the proposed amendments will ensure that adequate notice of the injunction is given.
- (2) Matthew E. Wilkins, Esq. (Detroit, Mi.) opposed the amendments because they could constitute an endorsement of the issuance of injunctions which the courts have no authority to issue.
- (3) Hon. Louise De Carl Adler (Bankr. S.D. Cal.), on behalf of the Chief Bankruptcy Judges of the Ninth Circuit, contends that the proposed amendments go beyond procedural change and are substantive in nature.

GAP Report on Rule 3016. 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

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2 (f) Notice and Transmission of Documents to Entities Subject to
3 an Injunction Under a Plan. If a plan provides for an injunction against
4 conduct not otherwise enjoined under the Code and an entity that would be
5 subject to the injunction is not a creditor or equity security holder, at the
6 hearing held under Rule 3017(a), the court shall consider procedures for
7 providing the entity with:

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

11 (2) to the extent feasible, a copy of the plan and disclosure
12 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.

Public Comment on Proposed Amendments to Rule 3017:

- (1) Jack E. Horsley, Esq. (Mattoon, Il.) believes that the proposed amendments will ensure that adequate notice of the injunction is given.
- (2) Matthew E. Wilkins, Esq. (Detroit, Mi.) opposed the amendments because they could constitute an endorsement of the issuance of injunctions which the courts have no authority to issue.
- (3) Hon. Louise De Carl Adler (Bankr. S.D. Cal.), on behalf of the Chief Bankruptcy Judges of the Ninth Circuit, contends that the proposed amendments go beyond procedural change and are substantive in nature.

GAP Report on Rule 3017. No changes 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

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(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

Public Comment on Proposed Amendments to Rule 3020:

- (1) Matthew E. Wilkins, Esq. (Detroit, Mi.) opposed the amendments because they could constitute an endorsement of the issuance of injunctions which the courts have no authority to issue.
- (2) Hon. Louise De Carl Adler (Bankr. S.D. Cal.), on behalf of the Chief Bankruptcy Judges of the Ninth Circuit, contends that the proposed amendments go beyond procedural change and are substantive in nature.

GAP Report on Rule 3020. No changes 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 validity and effect of injunctions provided for in plans is beyond the scope of the rules.

Rule 9006. Time

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(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.

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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.

Public Comment on Proposed Amendments to Rule 9006:

- (1) Jack E. Horsley, Esq. (Mattoon, Il.) supports service by electronic means but suggests that "electronic means" should be more explicitly defined in the rule.
- (2) Mark D. Reed, Esq. (Des Moines, Ia.) wholeheartedly supports service by electronic means.
- (3) Hon. Susan Pierson Sonderby (Bankr. N.D. Il.), on behalf of the Bankruptcy Judges for the Northern District of Illinois, strongly supports service by electronic means and proposed that such service be allowed even in the absence of the consent of the party to be served. She also states those judges' opposition to retaining the 3-day rule to service by electronic means.
- (4) Hon. Louise De Carl Adler (Bankr. S.D. Cal.), on behalf of the Chief Bankruptcy Judges of the Ninth Circuit, stated that there are good arguments for and against adding 3 days to the response period after electronic service, and she expressed no preference other than that the rule be identical under both the bankruptcy rules and the civil rules.
- (5) Ralph W. Brenner, Esq., David H. Marion, Esq., and Stephen A. Madva, Esq. (Philadelphia, Pa.) all strongly support electronic service and recommend that the bankruptcy rules and the civil rules be made consistent.
- (6) Francis Patrick Newell, Esq. (Philadelphia, Pa.) strongly supports electronic service and recommends that the bankruptcy rules and the civil rules be made consistent.
- (7) Martha L. Davis, Esq., General Counsel, Executive Office for United States Trustees (Washington, D.C.) supports the amendments permitting service by electronic means on persons who consent to that form of service. She also supports the adoption of a 3-day rule comparable to the mailing grace period already contained in the rules as a means of encouraging electronic service as well as to avoid artificially shortening the period due to electronic transmission errors, incompatible message formats, and the like.

- (8) Michael E. Kunz (Clerk, E.D. Pa.) states that the 3-day rule is unnecessary when electronic service is employed, and he notes also that the 3-day rule does not apply under the civil rules.

GAP Report on Rule 9006. No changes since publication.

Rule 9020. Contempt Proceedings

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

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

8 ~~(b) — *Other Contempt.* Contempt committed in a case or proceeding~~
9 ~~pending before a bankruptcy judge, except when determined as provided in~~
10 ~~subdivision (a) of this rule, may be determined by the bankruptcy judge only~~
11 ~~after a hearing on notice. The notice shall be in writing, shall state the essential~~
12 ~~facts constituting the contempt charged and describe the contempt as criminal~~
13 ~~or civil and shall state the time and place of hearing, allowing a reasonable~~
14 ~~time for the preparation of the defense. The notice may be given on the~~
15 ~~court's own initiative or on application of the United States attorney or by an~~
16 ~~attorney appointed by the court for that purpose. If the contempt charged~~
17 ~~involves disrespect to or criticism of a bankruptcy judge, that judge is~~

18 ~~disqualified from presiding at the hearing except with the consent of the~~
19 ~~person charged.~~

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

27 ~~(D) — *Right to Jury Trial.* Nothing in this rule shall be construed to~~
28 ~~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.

Public Comment on Proposed Amendments to Rule 9020:

- (1) Hon. Louise De Carl Adler (Bankr. S.D. Cal.), on behalf of the Chief Bankruptcy Judges of the Ninth Circuit, expressed concern that the proposed amendments could be read to undercut the bankruptcy courts' authority to exercise *sua sponte* contempt powers.
- (2) Martha L. Davis, Esq., General Counsel, Executive Office for United States Trustees (Washington, D.C.) stated strong opposition to the proposed amendments and advocated retention of the existing rule. The basis of her objection is that she is unpersuaded that the judicial developments governing the contempt powers of the bankruptcy courts justify the deletion of the more elaborate system of contempt actions in place under the current rule

GAP Report on Rule 9020. No changes in the text of the proposed amendments since publication. Stylistic changes were made to the Committee Note.

Rule 9022. Notice of Judgment or Order

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

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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.

Public Comment on Proposed Amendments to Rule 9022:

- (1) Jack E. Horsley, Esq. (Mattoon, Il.) supports the service of notice of entry of judgments and orders by electronic means.
- (2) Martha L. Davis, Esq., General Counsel, Executive Office for United States Trustees (Washington, D.C.) supports the proposed amendments but cautions that the rule could be construed to permit electronic service of judgments and orders even in the absence of

consent by the recipient of the notice.

GAP Report on Rule 9022. No changes since publication.

FORM 7. STATEMENT OF FINANCIAL AFFAIRS

UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

In re: _____,
(Name)
Debtor

Case No. _____
(if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE (if more than one)

2. Income other than from employment or operation of business

None

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

None

a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None

b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

None

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
---------------------------------	----------------------	------------------------------	-----------------------

None

- b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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5. Repossessions, foreclosures and returns

None

- List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and receiverships

None

- a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None

- b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. GiftsNone

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. LossesNone

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case or **since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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9. Payments related to debt counseling or bankruptcyNone

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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10. Other transfersNone

List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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11. Closed financial accountsNone

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxesNone

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. SetoffsNone

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another personNone

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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None

- c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS
OF GOVERNMENTAL UNIT

DOCKET NUMBER

STATUS OR
DISPOSITION

18 . Nature, location and name of business

None

- a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NUMBER	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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None

- b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

None

- a. List all bookkeepers and accountants who within the
- two years**
- immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS

DATES SERVICES RENDERED

None

- b. List all firms or individuals who within the
- two years**
- immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

None

- c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

None

- d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the
- two years**
- immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS

DATE ISSUED

20. Inventories

None

- a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY
(Specify cost, market or other basis)None

- b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN
OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

- None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
------------------	--------------------	------------------------

- None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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22 . Former partners, officers, directors and shareholders

- None a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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23 . Withdrawals from a partnership or distributions by a corporation

- None If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
---	--------------------------------	--

24. Tax Consolidation Group.

None

If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION TAXPAYER IDENTIFICATION NUMBER

25. Pension Funds.

None

If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PENSION FUND TAXPAYER IDENTIFICATION NUMBER

* * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date _____

Signature _____
of Debtor

Date _____

Signature _____
of Joint Debtor
(if any)

[If completed on behalf of a partnership or corporation]

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date _____

Signature _____

Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

_____ continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. § 152 and 3571

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer

Social Security No.

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title II and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 156.

COMMITTEE NOTE

The form has been amended to provide more information to taxing authorities, pension fund supervisors, and governmental units charged with environmental protection and regulation. Four new questions have been added to the form, covering community property owned by a debtor and the debtor's non-filing spouse or former spouse (Question 16), environmental information (Question 17), any consolidated tax group of a corporate debtor (Question 24), and the debtor's contributions to any employee pension fund (Question 25). In addition, every debtor will be required to state on the form whether the debtor has been in business within six years before filing the petition and, if so, must answer the remaining questions on the form (Questions 19-25). This is an enlargement of the two-year period previously specified. One reason for the longer "reach back" period is that business debtors often owe taxes that have been owed for more than two years. Another is that some of the questions already addressed to business debtors request information for the six-year period before the commencement of the case. Application of a six-year period to this section of the form will assure disclosure of all relevant information.

Public Comment on Official Form 7:

- (1) Jay W. Browder, General Manager of Forms, Inc. noted that the form is unclear as to whether a debtor who is not engaged in business must answer "none" or leave those boxes blank in the portion of the form addressed to business debtors. He also noted that Question 10 contains a subpart (a) but no other subparts.
- (2) Thomas J. Yerbich, Esq. (Alaska) suggested adding Alaska to the list of community property states set out in Question 16.
- (3) Bankruptcy and Reorganization Committee, Assoc. of the Bar of the City of New York supports the proposed changes to Form 7.
- (4) Sandra Connors, Director, Regional Support Division, Office of Site Remediation Enforcement, U. S. Environmental Protection Agency, supported the addition of Question 25 to the form.
- (5) Stephen J. Csontos, Senior Legislative Counsel, Tax Division, U.S. Dept. of Justice, supports the proposed changes to Form 7.
- (6) Karen J. Cordry, Esq., on behalf of the Bankruptcy and Taxation Working Group, National Assoc. of Attorneys General, stated that the amendments are generally helpful, but urged that the debtor be required to serve a copy of the petition and schedules on the relevant environmental agencies.

GAP Report on Official Form 7. The Form was revised in several respects. First, Alaska was added to the list of community property states listed in Question 16 of the Form. Second, the instructions on page 1 of the Form were restyled to clarify that non-business debtors need not answer Questions 18-25 of the Form. The Questions relating to environmental hazards were renumbered to be made applicable to all debtors, not just those engaged in business.

- (1) Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1004, 2004, 2014, 2015(a)(5), and 9027(a)(3), new Proposed Bankruptcy Rule 1004.1, and Proposed Amendments to Official Form 1.

1. *Synopsis of Proposed Amendments:*

- (a) Rule 1004 is amended to clarify that the rule implements § 303(b)(3)(A) of the Bankruptcy Code and is not intended to establish any substantive standard for the commencement of a voluntary case by a partnership.

- (b) Rule 1004.1 is added to set out the manner in which a case is commenced on behalf of an infant or an incompetent person. Proposed Rule 1004.1 is derived from Rule 17(c) F. R. Civ. P.
- (c) Rule 2004 is amended to clarify that an examination ordered under that rule may be held outside of the district in which the case is pending. The court where the examination will be held issues the subpoena, and it is served in the manner provided in Rule 45 F. R. Civ. P., made applicable by Rule 9016. Moreover, the rule makes clear that an attorney authorized to practice either in the court in which the case is pending or in the court for the district in which the examination will be held may issue and sign the subpoena on behalf of the court for the district in which the examination will be held.
- (d) Rule 2014 is rewritten to make it conform more closely to the applicable provisions of the Bankruptcy Code. The rule also includes stylistic changes and sets out service requirements for the application.
- (e) Rule 2015(a)(5) is amended to conform to 28 U.S.C. § 1930(a)(6) which was amended in 1996.
- (f) Rule 9027(a)(3) is amended to clarify that the time limits for filing a notice of removal of a claim or cause of action apply to any claim or cause of action initiated after the commencement of a bankruptcy case, whether the bankruptcy case is still pending or has been suspended, dismissed, or closed.
- (g) Official Form 1 is the form of a voluntary petition, and it is amended to require the debtor to disclose ownership or possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety.

2. *Text of Preliminary Draft of Proposed Amendments Submitted for Approval to Publish:*

Rule 1004. ~~Partnership~~ Petition ~~Involuntary~~ Petition Against a Partnership.

1 ~~(a) *Voluntary Petition.* A voluntary petition may be filed on behalf of a~~
 2 ~~partnership by one or more general partners if all general partners~~
 3 ~~consent to the petition~~

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5
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11

(b) ~~Involuntary Petition, Notice and Summons.~~ After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall ~~cause forthwith a copy of the petition to be sent~~ promptly send to or ~~served~~ serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue ~~forthwith~~ a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

COMMITTEE NOTE

Section 303(b)(3)(A) of the Code provides that fewer than all of the general partners in a partnership may commence an involuntary case against the partnership. There is no counterpart provision in the Code setting out the manner in which a partnership commences a voluntary case. The Supreme Court has held in the corporate context that applicable nonbankruptcy law determines whether authority exists for a particular debtor to commence a bankruptcy case. *See Price v. Gurney*, 324 U.S. 100 (1945). The lower courts have followed this rule in the partnership context as well. *See, e.g., Jolly v. Pittore*, 170 B.R. 793 (S.D.N.Y. 1994); *Union Planters National Bank v. Hunters Horn Associates*, 158 B.R. 729 (Bankr. M.D. Tenn. 1993); *In re Channel 64 Joint Venture*, 61 B.R. 255 (Bankr. S.D. Oh. 1986). Rule 1004(a) could be construed as requiring the consent of all of the general partners to the filing of a voluntary petition, even if fewer than all of the general partners would have the authority under applicable nonbankruptcy law to commence a bankruptcy case for the partnership. Since this is a matter of substantive law beyond the scope of these rules, Rule 1004(a) is deleted as is the designation of subdivision (b).

The rule is retitled to reflect that it applies only to involuntary petitions filed against partnerships.

Rule 1004.1. Petition for an Infant or Incompetent Person.

1

If an infant or incompetent person has a representative, including a general

2 guardian, committee, conservator, or similar fiduciary, the representative may
3 file a voluntary petition on behalf of the infant or incompetent person. An
4 infant or incompetent person who does not have a duly appointed
5 representative may file a voluntary petition by next friend or guardian ad litem.
6 The court shall appoint a guardian ad litem for an infant or incompetent
7 person who is a debtor and is not otherwise represented or shall make any
8 other order to protect the infant or incompetent debtor.

COMMITTEE NOTE

This rule is derived from Rule 17(c) F.R. Civ. P. It does not address the commencement of a case filed on behalf of a missing person. *See, e.g., In re King*, 234 B.R. 515 (Bankr. D.N.M. 1999).

Rule 2014. Employment of a Professional Person.

1 (a) *Application for Order Approving Employment.* An application for an order
2 approving the employment of a professional person under §327, §1103, or §1114 of
3 the Code shall be in writing and may be made only by the trustee or committee. The
4 application shall state:

5 (1) specific facts showing why the employment is necessary;

6 (2) the name of the person to be employed and the reasons for the selection;

7 (3) the professional services to be rendered;

8 (4) any proposed arrangement for compensation; and

9 (5) that, to the best of the trustee's or committee's knowledge, the person to be
10 employed is eligible under the Code for employment for the purposes set forth in the

11 application.

12 (b) Statement of Professional. The application shall be accompanied by a verified
13 statement of the person to be employed, made according to the best of that person's
14 knowledge, information, and belief, formed after an inquiry reasonable under the
15 circumstances, which shall state:

16 (1) that the person is eligible under the Code for employment for the purposes set
17 forth in the application;

18 (2) any interest that the person holds or represents that is adverse to the estate;

19 (3) any interest, connection, or relationship that the person has relevant to
20 determining whether the person is disinterested under § 101;

21 (4) any relationship the person has with the United States trustee, or with any
22 employee of the United States trustee, for the region in which the case is pending;

23 (5) the information required to be disclosed under §329(a) if the professional is
24 an attorney; and

25 (6) whether the person shared or has agreed to share any compensation with any
26 person, other than a partner, employee, or regular associate of the person to be
27 employed, and if so, the details.

28 (c) Service and Transmittal of Application.

29 (1) The applicant shall serve a copy of the application on:

30 (A) the trustee;

31 (B) the debtor and the debtor's attorney;

32 (C) any committee elected under §705 or appointed under § 1102, or, if the
33 case is a chapter 9 case or a chapter 11 case and no committee of unsecured creditors
34 has been appointed, on the creditors included on the list filed under Rule 1007(d); and

35 (D) any other entity as the court may direct.

36 (2) Unless the case is a chapter 9 case, the applicant shall transmit a copy of the
37 application to the United States trustee.

38 (d) *Services Rendered by Member or Associate of Firm of Employed Professional.*

39 If the court approves the employment of an individual, partnership, or corporation,
40 any partner, member, or regular associate of the individual, partnership, or
41 corporation may act as the person so employed, without further order of the court.

42 If a partnership is employed, a further order approving employment is not required if
43 the partnership has dissolved solely because of the addition or withdrawal of a
44 partner.

45 (e) *Supplemental Statement of Professional.* Within 15 days after becoming
46 aware of any undisclosed matter that is required to be disclosed under Rule 2014(b),
47 a person employed under this rule shall file a supplemental statement, serve a copy on
48 each entity listed in Rule 2014(c), and, unless the case is a chapter 9 case, transmit a
49 copy to the United States trustee.

COMMITTEE NOTE

The rule has been rewritten to make stylistic changes and to make it conform more closely to the applicable provisions of the Code. The rule directs professionals seeking court approval of their employment to disclose all information relevant to determining whether the person is “disinterested” as defined in § 101 of the Code.

The rule requires the professional to undertake a reasonable inquiry under the circumstances to identify any facts relevant to that determination.

The rule also sets out the service requirements for the application for the approval of employment. There is no provision requiring a hearing on the application. In most cases, an order approving the employment will be entered without a hearing. The court may set a hearing sua sponte or on request or may vacate an order issued under the rule upon motion of an interested party.

The rule does not address the standards that courts should apply in ruling on an application for employment of a professional.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case

1 (a) TRUSTEE OR DEBTOR IN POSSESSION. A

2 trustee or debtor in possession shall

3 *****

4 (5) in a chapter 11 reorganization case, on or before
5 the last day of the month after each calendar quarter
6 during which there is a duty to pay fees under 28
7 U.S.C. § 1930(a)(6), until a plan is confirmed or the
8 case is converted or dismissed, file and transmit to the
9 United States trustee a statement of the any
10 disbursements made during such calendar that quarter
11 and a statement of the amount of the any fees payable
12 under required pursuant to 28 U.S.C. § 1930(a)(6)
13 that has been paid for such calendar that quarter.

COMMITTEE NOTE

Subdivision (a)(5) is amended to provide that the duty to file quarterly disbursement reports continues only so long as there is an obligation to make quarterly payments to the United States trustee under 28 U.S.C. § 1930(a)(6).

Other amendments are stylistic.

Rule 9027. Removal

1 (a) *Notice of Removal.*

2 ****

3 (3) TIME FOR FILING; CIVIL ACTION INITIATED AFTER
4 COMMENCEMENT OF THE CASE UNDER THE CODE. ~~If a case under~~
5 ~~the Code is pending when a claim or cause of action is asserted in another~~
6 ~~court; If a claim or cause of action is asserted in another court after the~~
7 ~~commencement of a case under the Code, a notice of removal may be filed~~
8 with the clerk only within the shorter of (A) 30 days after receipt, through
9 service or otherwise, of a copy of the initial pleading setting forth the claim
10 or cause of action sought to be removed, or (B) 30 days after receipt of the
11 summons if the initial pleading has been filed with the court but not served
12 with the summons.

COMMITTEE NOTE

Subdivision (a)(3) is amended to clarify that if a claim or cause of action is initiated after the commencement of a bankruptcy case, the time limits for filing a notice of removal of the claim or cause of action apply whether the case is still pending or has been suspended, dismissed, or closed.

FORM B1	United States Bankruptcy Court District of _____	Voluntary Petition
----------------	---	---------------------------

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all):	Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- | | |
|--|---|
| <input type="checkbox"/> Individual(s) | <input type="checkbox"/> Railroad |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Stockbroker |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Commodity Broker |
| <input type="checkbox"/> Other _____ | |

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- | | | |
|--|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Chapter 7 | <input type="checkbox"/> Chapter 11 | <input type="checkbox"/> Chapter 13 |
| <input type="checkbox"/> Chapter 9 | <input type="checkbox"/> Chapter 12 | |
| <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding | | |

Nature of Debts (Check one box)

- Consumer/Non-Business Business

Chapter 11 Small Business (Check all boxes that apply)

- Debtor is a small business as defined in 11 U.S.C. § 101
- Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

- Full Filing Fee attached
- Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

- Debtor estimates that funds will be available for distribution to unsecured creditors.
- Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Assets							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Debts							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s):	
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)			
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
 [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
 I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
 The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____
Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X _____
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

Exhibit "C"

[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]

[Caption as in Form 16B]

Exhibit "C" to Voluntary Petition

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

COMMITTEE NOTE

The form has been amended to require the debtor to disclose whether the debtor owns or had possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety. If any such property exists, the debtor must complete and attach Exhibit "C" describing the property, its location, and the potential danger it poses. Exhibit "C" will alert the United States trustee and any person selected as trustee that immediate precautionary action may be necessary.

II Information Items

(1) *Proposed Bankruptcy Legislation*

Congress continues to consider comprehensive bankruptcy reform legislation. The House of Representatives passed H.R. 833 on May 5, 1999, and the Senate passed a different version of H.R. 833 on February 2, 2000. Both bills include provisions directing the Advisory Committee or the Judicial Conference to amend or add new Bankruptcy Rules or Official Bankruptcy Forms. Many other provisions also would create a need for amendments to the Bankruptcy Rules or Forms. A conference committee has not been created as of the date of this report, and the Advisory Committee is monitoring these developments closely.

(2) *Attorney Conduct and Disclosure of Financial Interests by Parties*

The Advisory Committee had the benefit of the presence and participation of Professor Coquillette, Reporter to the Standing Committee, who led a discussion of the work of the Standing Committee's Subcommittee on Attorney Conduct. He described the status of the work of the Subcommittee and noted that the current proposals would allow for the adoption of a specific rule to govern bankruptcy cases, but that it is premature to begin work on a special rule. When that time arises, the Advisory Committee will be asked to prepare a draft rule to supplement any other Federal Rules of Attorney Conduct.

Professor Coquillette also conducted a discussion of draft rule 7.1 prepared by the Advisory Committee on Civil Rules that would require disclosure of financial interests by parties. He noted that the rule likely would except bankruptcy cases from its reach, and that the Advisory Committee would be asked to address the subject more fully at its September 2000 meeting.

(3) Attachment: Draft Minutes of the March 9-10, 2000, meeting of the Advisory Committee on Bankruptcy Rules.