INTERIM BANKRUPTCY RULES

APPROVED BY THE ADVISORY COMMITTEE ON BANKRUPTCY RULES AND THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES IN AUGUST 2005

("REDLINE VERSION")

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1006. Filing Fee

1 (a) GENERAL REQUIREMENT. Every petition shall be
2 accompanied by the filing fee except as provided in
3 subdivisions (b) and (c) of this rule. For the purpose of this
4 rule, "filing fee" means the filing fee prescribed by 28 U.S.C.
5 § 1930(a)(1)-(a)(5) and any other fee prescribed by the
6 Judicial Conference of the United States under 28 U.S.C.
7 § 1930(b) that is payable to the clerk upon the commencement
8 of a case under the Code.
9 (b) PAYMENT OF FILING FEE IN INSTALLMENTS.
10 (1) *Application ~~for Permission~~ to Pay Filing Fee in*
11 *Installments.* A voluntary petition by an individual shall be
12 accepted for filing if accompanied by the debtor's signed
13 application, prepared as prescribed by the appropriate Official
14 Form, stating that the debtor is unable to pay the filing fee

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

15 except in installments. ~~The application shall state the~~
16 ~~proposed terms of the installment payments and that the~~
17 ~~applicant has neither paid any money nor transferred any~~
18 ~~property to an attorney for services in connection with the~~
19 ~~case.~~

20 * * * * *

21 (3) *Postponement of Attorney's Fees*. ~~The filing fee~~
22 All installments of the filing fee must be paid in full before
23 the debtor or chapter 13 trustee may make further payments
24 ~~pay an~~ to an attorney or any other person who renders services
25 to the debtor in connection with the case.

26 (c) WAIVER OF FILING FEE. A voluntary chapter 7
27 petition filed by an individual shall be accepted for filing if
28 accompanied by the debtor's application requesting a waiver
29 under 28 U.S.C. § 1930(f), prepared as prescribed by the
30 appropriate Official Form.

COMMITTEE NOTE

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C. § 1930(f), which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. The deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than request a waiver.

Subdivision (b)(3) is amended in conformance with the changes to (b)(1) to reflect the 2005 amendments. The change is meant to clarify that (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, the subdivision may conflict with intent and effect of the amendments to subdivision (b)(1).

Rule 1007. Lists, Schedules, ~~and~~ Statements, and Other Documents; Time Limits

1 (a) LIST OF CREDITORS AND EQUITY SECURITY

2 HOLDERS, AND CORPORATE OWNERSHIP

3 STATEMENT.

4 * * * * *

5 (4) *Chapter 15 Case.* Unless the court orders
6 otherwise, a foreign representative filing a petition for
7 recognition under chapter 15 shall file with the petition a list
8 containing the name and address of all administrators in
9 foreign proceedings of the debtor, all parties to any litigation
10 in which the debtor is a party and that is pending in the United
11 States at the time of the filing of the petition, and all entities
12 against whom provisional relief is being sought under § 1519
13 of the Code.

14 ~~(4)~~ (5) *Extension of Time.* Any extension of time for
15 the filing of lists required by this subdivision may be granted
16 only on motion for cause shown and on notice to the United
17 States trustee and to any trustee, committee elected ~~pursuant~~
18 ~~to~~ under § 705 or appointed ~~pursuant to~~ under § 1102 of the
19 Code, or other party as the court may direct.

20 (b) SCHEDULES, ~~AND~~ STATEMENTS, AND OTHER
21 DOCUMENTS REQUIRED.
22 (1) Except in a chapter 9 municipality case, the
23 debtor, unless the court orders otherwise, shall file the
24 following schedules, statements, and other documents,
25 prepared as prescribed by the appropriate Official Forms, if
26 any:
27 (A) schedules of assets and liabilities~~,~~ ;
28 (B) a schedule of current income and
29 expenditures~~,~~;
30 (C) a schedule of executory contracts and
31 unexpired leases~~, and~~ ;
32 (D) a statement of financial affairs~~, prepared as~~
33 ~~prescribed by the appropriate Official Forms~~ ;
34 (E) copies of all payment advices or other
35 evidence of payment, if any, with all but the last four digits of
36 the debtor's social security number redacted, received by the

37 debtor from an employer within 60 days before the filing of
38 the petition; and
39 (F) a record of any interest that the debtor has in
40 an account or program of the type specified in § 521(c) of the
41 Code.
42 (2) An individual debtor in a chapter 7 case shall file
43 a statement of intention as required by § 521(a) ~~521(2)~~ of the
44 Code, prepared as prescribed by the appropriate Official
45 Form. A copy of the statement of intention shall be served on
46 the trustee and the creditors named in the statement on or
47 before the filing of the statement.
48 (3) Unless the United States trustee has determined
49 that the credit counseling requirement of § 109 does not apply
50 in the district, an individual debtor must file the certificate
51 and debt repayment plan, if any, required by § 521(b), a
52 certification under § 109(h)(3), or a request for a
53 determination by the court under § 109(h)(4).

54 (4) Unless § 707(b)(2)(D) applies, an individual
55 debtor in a chapter 7 case with primarily consumer debts shall
56 file a statement of current monthly income prepared as
57 prescribed by the appropriate Official Form, and, if the debtor
58 has current monthly income greater than the applicable
59 median family income for the applicable state and household
60 size, the calculations in accordance with § 707(b), prepared as
61 prescribed by the appropriate Official Form.
62 (5) An individual debtor in a chapter 11 case shall file
63 a statement of current monthly income, prepared as prescribed
64 by the appropriate Official Form.
65 (6) A debtor in a chapter 13 case shall file a statement
66 of current monthly income, prepared as prescribed by the
67 appropriate Official Form, and, if the debtor has current
68 monthly income greater than the median family income for
69 the applicable state and family size, a calculation of

70 disposable income in accordance with § 1325(b)(3), prepared
71 as prescribed by the appropriate Official Form.
72 (7) An individual debtor in a chapter 7 or chapter 13
73 case shall file a statement regarding completion of a course in
74 personal financial management, prepared as prescribed by the
75 appropriate Official Form.
76 (c) TIME LIMITS.* In a voluntary case, the schedules,
77 ~~and~~ statements, and other documents required by subdivision
78 (b)(1), (4), (5), and (6); ~~other than the statement of intention,~~
79 shall be filed with the petition~~, or~~ within 15 days thereafter,
80 except as otherwise provided in subdivisions (d), (e), (f), and
81 (h) of this rule. In an involuntary case, the list in subdivision
82 (a)(2), and the schedules, ~~and~~ statements, and other
83 documents required by subdivision (b)(1) ~~other than the~~
84 ~~statement of intention,~~ shall be filed by the debtor within 15
85 days of the entry of the order for relief. The documents

*Includes amendments that take effect on December 1, 2005.

86 required by subdivision (b)(3) shall be filed with the petition
87 in a voluntary case. The statement required by subdivision
88 (b)(7) shall be filed by the debtor within 45 days after the first
89 date set for the meeting of creditors under § 341 of the Code
90 in a chapter 7 case, and no later than the last payment made
91 by the debtor as required by the plan or the filing of a motion
92 for entry of a discharge under § 1328(b) in a chapter 13 case.
93 Lists, schedules, ~~and~~ statements, and other documents filed
94 prior to the conversion of a case to another chapter shall be
95 deemed filed in the converted case unless the court directs
96 otherwise. Except as provided in § 1116(3) of the Code, any
97 ~~Any~~ extension of time for the filing of the schedules, ~~and~~
98 statements, and other documents may be granted only on
99 motion for cause shown and on notice to the United States
100 trustee and to any committee elected under § 705 or appointed
101 under § 1102 of the Code, trustee, examiner, or other party as
102 the court may direct. Notice of an extension shall be given to

103 the United States trustee and to any committee, trustee, or

104 other party as the court may direct.

105 * * * * *

COMMITTEE NOTE

The title of this rule is expanded to refer to "documents" in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition also must list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings of the debtor. This should ensure that the entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under Chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2921 (2002), the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(7) are new. They implement the 2005 amendments to the Bankruptcy Code. Subdivision (b)(3) provides a procedure for filing documents relating to the nonprofit credit counseling requirement provided by the 2005 amendments to § 109.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 revisions to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that determinations of disposable income start with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments

to the Bankruptcy Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Bankruptcy Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements

1 * * * * *

2 (b) STATEMENT OF INTENTION. The statement of

3 intention may be amended by the debtor at any time before

4 the expiration of the period provided in § 521(a) ~~521(2)(B)~~ of

5 the Code. The debtor shall give notice of the amendment to

6 the trustee and to any entity affected thereby.

7 * * * * *

COMMITTEE NOTE

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Code.

Rule 1010. Service of Involuntary Petition and Summons; Petition ~~Commencing Ancillary Case~~ For Recognition of a Foreign Nonmain Proceeding

1 On the filing of an involuntary petition or a petition
2 ~~commencing a case ancillary to~~ for recognition of a foreign
3 nonmain proceeding the clerk shall forthwith issue a
4 summons for service. When an involuntary petition is filed,
5 service shall be made on the debtor. When a petition
6 ~~commencing an ancillary case~~ for recognition of a foreign
7 nonmain proceeding is filed, service shall be made on the
8 ~~parties against whom relief is sought pursuant to § 304(b)~~
9 debtor, any entity against whom provisional relief is sought
10 under § 1519 of the Code, and on any other parties as the
11 court may direct. The summons shall be served with a copy
12 of the petition in the manner provided for service of a

13 summons and complaint by Rule 7004(a) or (b). If service
14 cannot be so made, the court may order that the summons and
15 petition be served by mailing copies to the party's last known
16 address, and by at least one publication in a manner and form
17 directed by the court. The summons and petition may be
18 served on the party anywhere. Rule 7004 (e) and Rule 4 (*l*)
19 F.R.Civ.P. apply when service is made or attempted under
20 this rule.

COMMITTEE NOTE

This rule is amended to implement the 2005 amendments to the Bankruptcy Code, which repealed § 304 of the Code and replaced it with chapter 15 governing ancillary and other cross-border cases. Under chapter 15, a foreign representative commences a case by filing a petition for recognition of a pending foreign nonmain proceeding. The amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, there is no need to serve all creditors of the debtor upon filing the petition for recognition. Only those entities against whom specific provisional relief is sought need to be served. The court may direct that service be made on additional entities as appropriate.

This rule does not apply to a petition for recognition of a foreign main proceeding.

Rule 1011. Responsive Pleading or Motion in Involuntary and ~~Ancillary~~ Cross-Border Cases

1 (a) WHO MAY CONTEST PETITION. The debtor
2 named in an involuntary petition or a party in interest to a
3 petition ~~commencing a case ancillary to a~~ for recognition of
4 a foreign proceeding may contest the petition. In the case of
5 a petition against a partnership under Rule 1004, a
6 nonpetitioning general partner, or a person who is alleged to
7 be a general partner but denies the allegation, may contest the
8 petition.
9 * * * * *

COMMITTEE NOTE

The rule is amended to reflect the 2005 amendments to the Bankruptcy Code, which repealed § 304 of the Code and added chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 of the Code governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

Rule 1017. Dismissal or Conversion of Case; Suspension

1 * * * * *

2 (e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S
3 CHAPTER 7 CASE OR CONVERSION TO A CASE
4 UNDER CHAPTER 11 or 13 FOR ~~SUBSTANTIAL~~ ABUSE.
5 The court may dismiss or, with the debtor's consent, convert
6 an individual debtor's case for ~~substantial~~ abuse under
7 § 707(b) only on motion ~~by the United States trustee or on the~~
8 ~~court's own motion~~ and after a hearing on notice to the debtor,
9 the trustee, the United States trustee, and any other entities as
10 the court directs.

11 (1) Except as otherwise provided in § 704(b)(2), a ~~A~~
12 motion to dismiss a case for ~~substantial~~ abuse under § 707(b)
13 or (c) may be filed ~~by the United States trustee~~ only within 60
14 days after the first date set for the meeting of creditors under
15 § 341(a), unless, on request filed ~~by the United States trustee~~
16 before the time has expired, the court for cause extends the

17 time for filing the motion to dismiss. The ~~United States~~
18 ~~trustee~~ party filing the motion shall set forth in the motion all
19 matters to be considered ~~submitted to the court for its~~
20 ~~consideration~~ at the hearing. A motion to dismiss under
21 § 707(b)(1) and (3) shall state with particularity the
22 circumstances alleged to constitute abuse.
23 * * * * *

COMMITTEE NOTE

Subdivisions (e) and (e)(1) are amended to implement the 2005 revisions to § 707 of the Code. These revisions permit conversion of a chapter 7 case to a case under chapter 11 or 13, change the basis for dismissal or conversion from "substantial abuse" to "abuse," authorize parties other than the United States trustee to bring motions under § 707(b) under certain circumstances, and add § 707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under § 707(b)(2), which are quite specific, the grounds under § 707(b)(1) and (3) are very general. Subdivision (e) therefore requires that motions to dismiss under §§ 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse to enable the debtor to respond.

Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case

1 * * * * *

2 (2) NEW FILING PERIODS. A new time period
3 for filing ~~claims,~~ a motion under § 707(b) or (c), a claim, a
4 complaint objecting to discharge, or a complaint to obtain a
5 determination of dischargeability of any debt shall commence
6 under ~~pursuant to~~ Rules 1017, 3002, 4004, or 4007, provided
7 that a new time period shall not commence if a chapter 7 case
8 had been converted to a chapter 11, 12, or 13 case and
9 thereafter reconverted to a chapter 7 case and the time for
10 filing ~~claims,~~ a motion under § 707(b) or (c), a claim, a
11 complaint objecting to discharge, or a complaint to obtain a
12 determination of the dischargeability of any debt, or any
13 extension thereof, expired in the original chapter 7 case.

14 * * * * *

COMMITTEE NOTE

Subdivision (2) is amended to provide a new filing period for motions under § 707(b) and (c) of the Code when a case is converted to chapter 7.

Rule 1020. ~~Election to be Considered a Small Business in a Chapter 11 Reorganization Case~~ Small Business Chapter 11 Reorganization Case

1 ~~In a chapter 11 reorganization case, a debtor that is a small~~
2 ~~business may elect to be considered a small business by filing~~
3 ~~a written statement of election not later than 60 days after the~~
4 ~~date of the order for relief.~~
5 (a) SMALL BUSINESS DEBTOR DESIGNATION. In
6 a voluntary chapter 11 case, the debtor shall state in the
7 petition whether the debtor is a small business debtor. In an
8 involuntary chapter 11 case, the debtor shall file within 15
9 days after entry of the order for relief a statement as to
10 whether the debtor is a small business debtor. Except as
11 provided in subdivision (c), the status of the case with respect
12 to whether it is a small business case shall be in accordance

13 with the debtor's statement under this subdivision, unless and
14 until the court enters an order finding that the debtor's
15 statement is incorrect.

16 (b) OBJECTING TO DESIGNATION. Except as
17 provided in subdivision (c), the United States trustee or a
18 party in interest may file an objection to the debtor's
19 statement under subdivision (a) not later than 30 days after the
20 conclusion of the meeting of creditors held under § 341(a) of
21 the Code, or within 30 days after any amendment to the
22 statement, whichever is later.

23 (c) APPOINTMENT OF COMMITTEE OF
24 UNSECURED CREDITORS. If the United States trustee has
25 appointed a committee of unsecured creditors under
26 § 1102(a)(1), the case shall proceed as a small business case
27 only if, and from the time when, the court enters an order
28 determining that the committee has not been sufficiently
29 active and representative to provide effective oversight of the

30 debtor and that the debtor satisfies all the other requirements
31 for being a small business. A request for a determination
32 under this subdivision may be filed by the United States
33 trustee or a party in interest only within a reasonable time
34 after the failure of the committee to be sufficiently active and
35 representative. The debtor may file a request for a
36 determination at any time as to whether the committee has
37 been sufficiently active and representative.

38 (d) PROCEDURE FOR OBJECTION OR
39 DETERMINATION. Any objection or request for a
40 determination under this rule shall be governed by Rule 9014
41 and served on the debtor, the debtor's attorney, the United
42 States trustee, the trustee, any committee appointed under
43 § 1102 or its authorized agent, or, if no committee of
44 unsecured creditors has been appointed under § 1102, on the
45 creditors included on the list filed under Rule 1007(d), and on
46 such other entities as the court may direct.

COMMITTEE NOTE

Under the Bankruptcy Code, as amended in 2005, there are no provisions permitting or requiring a small business debtor to elect to be treated as a small business. Therefore, there is no longer any need for a rule on elections to be considered a small business.

The 2005 amendments to the Code include several provisions relating to small business cases under chapter 11. Section 101 of the Code includes definitions of "small business debtor" and "small business case." The purpose of the new language in this rule is to provide a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor, and to provide procedures for resolving disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule.

An important factor in determining whether the debtor is a small business debtor is whether the United States trustee has appointed a committee of unsecured creditors under § 1102 of the Code, and whether such a committee is sufficiently active and representative. Subdivision (c), relating to the appointment and activity of a committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."

Rule 1021. Health Care Business Case

1 (a) HEALTH CARE BUSINESS DESIGNATION.

2 Unless the court orders otherwise, if a petition in a case under

3 chapter 7, chapter 9, or chapter 11 states that the debtor is a
4 health care business, the case shall proceed as a case in which
5 the debtor is a health care business.
6 (b) MOTION. The United States trustee or a party in
7 interest may file a motion for a determination as to whether
8 the debtor is a health care business. The motion shall be
9 transmitted to the United States trustee and served on the
10 debtor, the trustee, any committee elected under § 705 or
11 appointed under § 1102 of the Code or its authorized agent,
12 or, if the case is a chapter 9 municipality case or a chapter 11
13 reorganization case and no committee of unsecured creditors
14 has been appointed under § 1102, on the creditors included on
15 the list filed under Rule 1007(d), and such other entities as the
16 court may direct. The motion shall be governed by Rule
17 9014.

COMMITTEE NOTE

Section 101(27A) of the Code, added in 2005, defines a health care business. This rule provides procedures for identifying the debtor

as a health care business. The debtor in a voluntary case, or petitioning creditors in an involuntary case, will usually make the identification by checking the appropriate box on the petition. If a party in interest or the United States trustee disagrees with the determination by the debtor or the petitioning creditors as to whether the debtor is a health care business, this rule provides procedures for resolving the dispute.

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

1 (a) TWENTY-DAY NOTICES TO PARTIES IN
2 INTEREST. Except as provided in subdivisions (h), (i), ~~and~~
3 ~~(*l*)~~ (*l*), (p), and (q) of this rule, the clerk, or some other person
4 as the court may direct, shall give the debtor, the trustee, all
5 creditors and indenture trustees at least 20 days' notice by
6 mail of:

7 * * * * *

8 (b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN
9 INTEREST. Except as provided in subdivision (*l*) of this
10 rule, the clerk, or some other person as the court may direct,

11 shall give the debtor, the trustee, all creditors and indenture
12 trustees not less than 25 days notice by mail of (1) the time
13 fixed for filing objections and the hearing to consider
14 approval of a disclosure statement <u>or, under § 1125(f), to</u>
15 <u>make a final determination whether the plan provides</u>
16 <u>adequate information so that a separate disclosure statement</u>
17 <u>is not necessary</u>; and (2) the time fixed for filing objections
18 and the hearing to consider confirmation of a chapter 9,
19 chapter 11, or chapter 13 plan.

20 (c) CONTENT OF NOTICE.

21 (1) *Proposed Use, Sale, or Lease of Property.*
22 Subject to Rule 6004 the notice of a proposed use, sale, or
23 lease of property required by subdivision (a)(2) of this rule
24 shall include the time and place of any public sale, the terms
25 and conditions of any private sale and the time fixed for filing
26 objections. The notice of a proposed use, sale, or lease of
27 property, including real estate, is sufficient if it generally

28 describes the property. The notice of a proposed sale or lease
29 of personally identifiable information under § 363(b)(1)(A) or
30 (B) of the Code shall state whether the sale is consistent with
31 a policy prohibiting the transfer of the information.

32 * * * * *

33 (f) OTHER NOTICES. Except as provided in subdivision
34 (*l*) of this rule, the clerk, or some other person as the court
35 may direct, shall give the debtor, all creditors, and indenture
36 trustees notice by mail of: (1) the order for relief; (2) the
37 dismissal or the conversion of the case to another chapter, or
38 the suspension of proceedings under § 305; (3) the time
39 allowed for filing claims pursuant to Rule 3002; (4) the time
40 fixed for filing a complaint objecting to the debtor's discharge
41 pursuant to § 727 of the Code as provided in Rule 4004; (5)
42 the time fixed for filing a complaint to determine the
43 dischargeability of a debt pursuant to § 523 of the Code as
44 provided in Rule 4007; (6) the waiver, denial, or revocation

45 of a discharge as provided in Rule 4006; (7) entry of an order
46 confirming a chapter 9, 11, or 12 plan; ~~and~~ (8) a summary of
47 the trustee's final report in a chapter 7 case if the net proceeds
48 realized exceed $1,500; (9) a notice under Rule 5008
49 regarding the presumption of abuse; and (10) a statement
50 under § 704(b)(1) as to whether the debtor's case would be
51 presumed to be an abuse under § 707(b). Notice of the time
52 fixed for accepting or rejecting a plan pursuant to Rule
53 3017(c) shall be given in accordance with Rule 3017(d).

54 * * * * *

55 (p) NOTICE TO A FOREIGN CREDITOR.

56 (1) If, at the request of a party in interest or the United
57 States trustee, or on its own initiative, the court finds that a
58 notice mailed within the time prescribed by these rules would
59 not be sufficient to give a creditor with a foreign address to
60 which notices under these rules are mailed reasonable notice
61 under the circumstances, the court may order that the notice

62 be supplemented with notice by other means or that the time
63 prescribed for the notice by mail be enlarged.
64 (2) Unless the court for cause orders otherwise, a
65 creditor with a foreign address to which notices under this
66 rule are mailed shall be given at least 30 days' notice of the
67 time fixed for filing a proof of claim under Rule 3002(c) or
68 Rule 3003(c).
69 (q) NOTICE OF PETITION FOR RECOGNITION OF
70 FOREIGN PROCEEDING AND OF COURT'S INTENTION
71 TO COMMUNICATE WITH FOREIGN COURTS AND
72 FOREIGN REPRESENTATIVES.
73 (1) *Notice of Petition for Recognition.* The clerk, or
74 some other person as the court may direct, shall forthwith
75 give the debtor, all administrators in foreign proceedings of
76 the debtor, all entities against whom provisional relief is
77 being sought under § 1519 of the Code, all parties to any
78 litigation in which the debtor is a party and that is pending in

79 the United States at the time of the filing of the petition, and
80 such other entities as the court may direct, at least 20 days'
81 notice by mail of the hearing on the petition for recognition of
82 a foreign proceeding. The notice shall state whether the
83 petition seeks recognition as a foreign main proceeding or
84 foreign nonmain proceeding.

85 (2) *Notice of Court's Intention to Communicate with*
86 *Foreign Courts and Foreign Representatives*. The clerk, or
87 some other person as the court may direct, shall give the
88 debtor, all administrators in foreign proceedings of the debtor,
89 all entities against whom provisional relief is being sought
90 under § 1519 of the Code, all parties to any litigation in which
91 the debtor is a party and that is pending in the United States
92 at the time of the filing of the petition, and such other entities
93 as the court may direct, notice by mail of the court's intention
94 to communicate with a foreign court or foreign representative
95 as prescribed by Rule 5012.

COMMITTEE NOTE

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Section 1514(d) of the Code, added in 2005, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to the rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Bankruptcy Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to § 704(b) which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules

governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative under Rule 5012.

Rule 2003. Meeting of Creditors or Equity Security Holders

1 (a) DATE AND PLACE. Except as provided in § 341(e)
2 of the Code, in ~~In~~ a chapter 7 liquidation or a chapter 11
3 reorganization case, the United States trustee shall call a
4 meeting of creditors to be held no fewer than 20 and no more
5 than 40 days after the order for relief. In a chapter 12 family
6 farmer debt adjustment case, the United States trustee shall
7 call a meeting of creditors to be held no fewer than 20 and no
8 more than 35 days after the order for relief. In a chapter 13
9 individual's debt adjustment case, the United States trustee
10 shall call a meeting of creditors to be held no fewer than 20
11 and no more than 50 days after the order for relief. If there is
12 an appeal from or a motion to vacate the order for relief, or if

13 there is a motion to dismiss the case, the United States trustee
14 may set a later date for the meeting. The meeting may be held
15 at a regular place for holding court or at any other place
16 designated by the United States trustee within the district
17 convenient for the parties in interest. If the United States
18 trustee designates a place for the meeting which is not
19 regularly staffed by the United States trustee or an assistant
20 who may preside at the meeting, the meeting may be held not
21 more than 60 days after the order for relief.

22 * * * * *

COMMITTEE NOTE

If the debtor has solicited acceptances to a plan before commencement of the case, § 341(e), which was added to the Bankruptcy Code in 2005, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

1 * * * * *

2 (b) ELECTION OF TRUSTEE.

3 * * * * *

4 (3) *Report of Election and Resolution of Disputes.*

5 (A) Report of Undisputed Election. If no dispute

6 arises out of the election ~~is not disputed~~, the United States

7 trustee shall promptly file a report ~~of~~ certifying the election,

8 including the name and address of the person elected and a

9 statement that the election is undisputed. The report shall be

10 accompanied by a verified statement of the person elected

11 setting forth the person's connections with the debtor,

12 creditors, any other party in interest, their respective attorneys

13 and accountants, the United States trustee, or any person

14 employed in the office of the United States trustee. ~~The~~

15 ~~United States trustee shall file with the report an application~~

16 ~~for approval of the appointment in accordance with~~

17 ~~subdivision (c) of this rule. The report constitutes~~

18 ~~appointment of the elected person to serve as trustee, subject~~

19 ~~to court approval, as of the date of entry of the order~~

20 ~~approving the appointment.~~

21 (B) Dispute Arising Out of an ~~Disputed~~ Election.

22 If a dispute arises out of an ~~the~~ election ~~is disputed~~, the United

23 States trustee shall promptly file a report stating that the

24 election is disputed, informing the court of the nature of the

25 dispute, and listing the name and address of any candidate

26 elected under any alternative presented by the dispute. The

27 report shall be accompanied by a verified statement by each

28 candidate elected under each alternative presented by the

29 dispute, setting forth the person's connections with the debtor,

30 creditors, any other party in interest, their respective attorneys

31 and accountants, the United States trustee, ~~and~~ or any person

32 employed in the office of the United States trustee. Not later

33 than the date on which the report of the disputed election is

34 filed, the United States trustee shall mail a copy of the report

35 and each verified statement to any party in interest that has

36 made a request to convene a meeting under § 1104(b) or to
37 receive a copy of the report, and to any committee appointed
38 under § 1102 of the Code. ~~Unless a motion for the resolution~~
39 ~~of the dispute is filed not later than 10 days after the United~~
40 ~~States trustee files the report, any person appointed by the~~
41 ~~United States trustee under § 1104(d) and approved in~~
42 ~~accordance with subdivision (c) of this rule shall serve as~~
43 ~~trustee. If a motion for the resolution of the dispute is timely~~
44 ~~filed, and the court determines the result of the election and~~
45 ~~approves the person elected, the report will constitute~~
46 ~~appointment of the elected person as of the date of entry of~~
47 ~~the order approving the appointment.~~
48 (c) APPROVAL OF APPOINTMENT. An order
49 approving the appointment of a trustee ~~elected under~~
50 ~~§ 1104(b) or appointed under § 1104(d),~~ or ~~the appointment~~
51 ~~of~~ an examiner under §1104(d) of the Code, shall be made on
52 application of the United States trustee. The application shall

53 state the name of the person appointed and, to the best of the
54 applicant's knowledge, all the person's connections with the
55 debtor, creditors, any other parties in interest, their respective
56 attorneys and accountants, the United States trustee, ~~and~~ or
57 persons employed in the office of the United States trustee.
58 ~~Unless the person has been elected under § 1104(b), the~~ The
59 application shall state the names of the parties in interest with
60 whom the United States trustee consulted regarding the
61 appointment. The application shall be accompanied by a
62 verified statement of the person appointed setting forth the
63 person's connections with the debtor, creditors, any other
64 party in interest, their respective attorneys and accountants,
65 the United States trustee, ~~and~~ or any person employed in the
66 office of the United States trustee.

COMMITTEE NOTE

Under § 1104(b)(2) of the Code, as amended in 2005, if an eligible, disinterested person is elected to serve as trustee in a chapter

11 case, the United States trustee is directed to file a report certifying the election. The person elected does not have to be appointed to the position. Rather, the filing of the report certifying the election itself constitutes the appointment. The section further provides that in the event of a dispute in the election of a trustee, the court must resolve the matter. The rule is amended to be consistent with § 1104(b)(2).

When the United States trustee files a report certifying the election of a trustee, the person elected must provide a verified statement, similar to the statement required of professional persons under Rule 2014, disclosing connections with parties in interest and certain other persons connected with the case. Although court approval of the person elected is not required, the disclosure of the person's connections will enable parties in interest to determine whether the person is disinterested.

Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case

1 (a) ORDER TO APPOINT PATIENT CARE
2 OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case
3 in which the debtor is a health care business, the court shall
4 order the appointment of a patient care ombudsman under
5 § 333 of the Code, unless the court, on motion of the United
6 States trustee or a party in interest filed not later than 20 days
7 after the commencement of the case or within another time
8 fixed by the court, finds that the appointment of a patient care

9 ombudsman is not necessary for the protection of patients
10 under the specific circumstances of the case.
11 (b) MOTION FOR ORDER TO APPOINT
12 OMBUDSMAN. If the court has ordered that the
13 appointment of an ombudsman is not necessary, or has
14 ordered the termination of the appointment of an ombudsman,
15 the court, on motion of the United States trustee or a party in
16 interest, may order the appointment at any time during the
17 case if the court finds that the appointment of an ombudsman
18 has become necessary to protect patients.
19 (c) APPOINTMENT OF OMBUDSMAN. If a patient
20 care ombudsman is appointed under § 333, the United States
21 trustee shall promptly file a notice of the appointment,
22 including the name and address of the person appointed.
23 Unless the person appointed is a State Long-Term Care
24 Ombudsman, the notice shall be accompanied by a verified
25 statement of the person appointed setting forth the person's

26 connections with the debtor, creditors, patients, any other
27 party in interest, their respective attorneys and accountants,
28 the United States trustee, and any person employed in the
29 office of the United States trustee.

30 (d) TERMINATION OF APPOINTMENT. On motion
31 of the United States trustee or a party in interest, the court
32 may terminate the appointment of a patient care ombudsman
33 if the court finds that the appointment is not necessary for the
34 protection of patients.

35 (e) MOTION. A motion under this rule shall be governed
36 by Rule 9014. The motion shall be transmitted to the United
37 States trustee and served on the debtor, the trustee, any
38 committee elected under § 705 or appointed under § 1102 of
39 the Code or its authorized agent, or, if the case is a chapter 9
40 municipality case or a chapter 11 reorganization case and no
41 committee of unsecured creditors has been appointed under

42 § 1102, on the creditors included on the list filed under Rule

43 1007(d), and such other entities as the court may direct.

COMMITTEE NOTE

Section 333 of the Code, added in 2005, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by professional persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the appointment.

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

1 * * * * *

2 (d) FOREIGN REPRESENTATIVE. In a case in which
3 the court has granted recognition of a foreign proceeding
4 under chapter 15, the foreign representative shall file any
5 notice required under § 1518 of the Code within 15 days after
6 the date when the representative becomes aware of the
7 subsequent information.

8 ~~(d)~~ (e) TRANSMISSION OF REPORTS. In a chapter 11
9 case the court may direct that copies or summaries of annual
10 reports and copies or summaries of other reports shall be
11 mailed to the creditors, equity security holders, and indenture
12 trustees. The court may also direct the publication of
13 summaries of any such reports. A copy of every report or

14 summary mailed or published pursuant to this subdivision

15 shall be transmitted to the United States trustee.

COMMITTEE NOTE

The rule is amended to fix the time for the filing of notices under § 1519 which was added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

Rule 2015.1. Patient Care Ombudsman

1 (a) REPORTS. Unless the court orders otherwise, a

2 patient care ombudsman, at least 10 days before making a

3 report under § 333(b)(2) of the Code, shall give notice that the

4 report will be made to the court. The notice shall be

5 transmitted to the United States trustee, posted conspicuously

6 at the health care facility that is the subject of the report, and

7 served on the debtor, the trustee, all patients, and any

8 committee elected under § 705 or appointed under § 1102 of

9 the Code or its authorized agent, or, if the case is a chapter 9

10 municipality case or a chapter 11 reorganization case and no

11 committee of unsecured creditors has been appointed under

12 § 1102, on the creditors included on the list filed under Rule
13 1007(d), and such other entities as the court may direct. The
14 notice shall state the date and time when the report will be
15 made, the manner in which the report will be made, and, if the
16 report is in writing, the name, address, telephone number,
17 email address, and website, if any, of the person from whom
18 a copy of the report may be obtained at the debtor's expense.
19 (b) AUTHORIZATION TO REVIEW CONFIDENTIAL
20 PATIENT RECORDS. A motion by a health care
21 ombudsman under § 333(c) to review confidential patient
22 records shall be governed by Rule 9014, served on the patient
23 and any family member or other contact person whose name
24 and address has been given to the trustee or the debtor for the
25 purpose of providing information regarding the patient's
26 health care, and transmitted to the United States trustee
27 subject to applicable nonbankruptcy law relating to patient
28 privacy. Unless the court orders otherwise, a hearing on the

29 motion may be commenced no earlier than 15 days after

30 service of the motion.

COMMITTEE NOTE

This rule is new. It implements § 333, added to the Code in 2005. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or to periodic reports to be given during the case. For example, the ombudsman may give notice that reports will be made at specified intervals or dates during the case.

Subdivision (a) of the rule requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patient. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Rule 2015.2. Transfer of Patient in Health Care Business Case

1 Unless the court orders otherwise, if the debtor is a health
2 care business, the trustee may not transfer a patient to another
3 health care business under § 704(a)(12) of the Code unless the
4 trustee gives at least 10 days' notice of the transfer to the
5 patient care ombudsman, if any, and to the patient and any
6 family member or other contact person whose name and
7 address has been given to the trustee or the debtor for the
8 purpose of providing information regarding the patient's
9 health care subject to applicable nonbankruptcy law relating
10 to patient privacy.

COMMITTEE NOTE

This rule is new. Section 704(a)(12), added to the Code in 2005, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

This rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. The facility could be closed immediately, or very quickly, such that 10 days' notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Rule 3002. Filing Proof of Claim or Interest

1 * * * * *

2 (c) TIME FOR FILING. In a chapter 7 liquidation,
3 chapter 12 family farmer's debt adjustment, or chapter 13
4 individual's debt adjustment case, a proof of claim is timely
5 filed if it is filed not later than 90 days after the first date set
6 for the meeting of creditors called under § 341(a) of the Code,
7 except as follows:
8 (1) A proof of claim filed by a governmental unit,
9 <u>other than for a claim resulting from a tax return filed under</u>
10 <u>§ 1308,</u> is timely filed if it is filed not later than 180 days after

11 the date of the order for relief. On motion of a governmental
12 unit before the expiration of such period and for cause shown,
13 the court may extend the time for filing of a claim by the
14 governmental unit. A proof of claim filed by a governmental
15 unit for a claim resulting from a tax return filed under § 1308
16 is timely filed if it is filed not later than 180 days after the
17 date of the order for relief or 60 days after the date of the
18 filing of the tax return, whichever is later.
19 * * * * *
20 (6) If notice of the time for filing a proof of claim has
21 been mailed to a creditor at a foreign address, on motion filed
22 by the creditor before or after the expiration of the time, the
23 court may extend the time by not more than 60 days if the
24 court finds that the notice was not sufficient under the
25 circumstances to give the creditor a reasonable time to file a
26 proof of claim.

COMMITTEE NOTE

Subdivision (c)(1) is amended to reflect the addition of § 1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case.

Paragraph (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with § 1514(d), which was added to the Code in 2005 and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

1 * * * * *

2 (c) FILING PROOF OF CLAIM.

3 (1) *Who May File.* Any creditor or indenture trustee
4 may file a proof of claim within the time prescribed by
5 subdivision (c)(3) of this rule.

6 (2) *Who Must File.* Any creditor or equity security
7 holder whose claim or interest is not scheduled or scheduled
8 as disputed, contingent, or unliquidated shall file a proof of
9 claim or interest within the time prescribed by subdivision
10 (c)(3) of this rule; any creditor who fails to do so shall not be
11 treated as a creditor with respect to such claim for the
12 purposes of voting and distribution.

13 (3) *Time for Filing.* The court shall fix and for cause
14 shown may extend the time within which proofs of claim or
15 interest may be filed. Notwithstanding the expiration of such
16 time, a proof of claim may be filed to the extent and under the
17 conditions stated in Rule 3002(c)(2), (c)(3), ~~and~~ (c)(4), and
18 (c)(6).

19 (4) *Effect of Filing Claim or Interest.* A proof of
20 claim or interest executed and filed in accordance with this
21 subdivision shall supersede any scheduling of that claim or
22 interest pursuant to § 521(a)(1) of the Code.
23 (5) *Filing by Indenture Trustee.* An indenture trustee
24 may file a claim on behalf of all known or unknown holders
25 of securities issued pursuant to the trust instrument under
26 which it is trustee.
27 * * * * *

COMMITTEE NOTE

The rule is amended to implement § 1514(d), which was added to the Code in 2005, by making the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. Section 1514(d) requires that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

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

1 * * * * *

2 (b) DISCLOSURE STATEMENT. In a chapter 9 or 11
3 case, a disclosure statement under § 1125 or evidence
4 showing compliance with § 1126(b) of the Code shall be filed
5 with the plan or within a time fixed by the court, unless the
6 plan is intended to provide adequate information under
7 § 1125(f)(1). If the plan is intended to provide adequate
8 information under § 1125(f)(1), it shall be so designated and
9 Rule 3017.1 shall apply as if the plan is a disclosure
10 statement.
11 * * * * *

COMMITTEE NOTE

Subdivision (b) is amended to recognize that, in 2005, § 1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case

1 (a) CONDITIONAL APPROVAL OF DISCLOSURE
2 STATEMENT. ~~If the debtor is~~ In a small business case ~~and~~
3 ~~has made a timely election to be considered a small business~~
4 ~~in a chapter 11 case~~, the court may, on application of the plan
5 proponent or on its own initiative, conditionally approve a
6 disclosure statement filed in accordance with Rule 3016~~(b)~~.
7 On or before conditional approval of the disclosure statement,
8 the court shall:
9 (1) fix a time within which the holders of claims and
10 interests may accept or reject the plan;
11 (2) fix a time for filing objections to the disclosure
12 statement;
13 (3) fix a date for the hearing on final approval of the
14 disclosure statement to be held if a timely objection is filed;
15 and
16 (4) fix a date for the hearing on confirmation.

17 (b) APPLICATION OF RULE 3017. Rule 3017(a), (b),
18 (c), and (e) do not apply to a conditionally approved
19 disclosure statement. Rule 3017(d) applies to a conditionally
20 approved disclosure statement, except that conditional
21 approval is considered approval of the disclosure statement
22 for the purpose of applying Rule 3017(d).

23 (c) FINAL APPROVAL.

24 (1) *Notice*. Notice of the time fixed for filing
25 objections and the hearing to consider final approval of the
26 disclosure statement shall be given in accordance with Rule
27 2002 and may be combined with notice of the hearing on
28 confirmation of the plan.

29 (2) *Objections*. Objections to the disclosure statement
30 shall be filed, transmitted to the United States trustee, and
31 served on the debtor, the trustee, any committee appointed
32 under the Code and any other entity designated by the court at

33 any time before final approval of the disclosure statement or

34 by an earlier date as the court may fix.

35 (3) *Hearing*. If a timely objection to the disclosure

36 statement is filed, the court shall hold a hearing to consider

37 final approval before or combined with the hearing on

38 confirmation of the plan.

COMMITTEE NOTE

Section 101 of the Code, as amended in 2005, defines a "small business case" and "small business debtor,"and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under § 1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule.

Rule 3019. Modification of Accepted Plan Before <u>or After</u> Confirmation in a Chapter 9 Municipality or Chapter 11 Reorganization Case

1 <u>(a)</u> In a chapter 9 or chapter 11 case, after a plan has been

2 accepted and before its confirmation, the proponent may file

3 a modification of the plan. If the court finds after hearing on

4 notice to the trustee, any committee appointed under the
5 Code, and any other entity designated by the court that the
6 proposed modification does not adversely change the
7 treatment of the claim of any creditor or the interest of any
8 equity security holder who has not accepted in writing the
9 modification, it shall be deemed accepted by all creditors and
10 equity security holders who have previously accepted the
11 plan.

12 (b) If the debtor is an individual, a request to modify the
13 plan under § 1127(e) of the Code shall identify the proponent
14 and shall be filed together with the proposed modification.
15 The clerk, or some other person as the court may direct, shall
16 give the debtor, the trustee, and all creditors not less than 20
17 days' notice by mail of the time fixed for filing objections
18 and, if an objection is filed, the hearing to consider the
19 proposed modification, unless the court orders otherwise with
20 respect to creditors who are not affected by the proposed

21 modification. A copy of the notice shall be transmitted to the
22 United States trustee. A copy of the proposed modification
23 shall be included with the notice. Any objection to the
24 proposed modification shall be filed and served on the debtor,
25 the proponent of the modification, the trustee, and any other
26 entity designated by the court, and shall be transmitted to the
27 United States trustee. An objection to a proposed
28 modification is governed by Rule 9014.

COMMITTEE NOTE

Section 1127 was amended in 2005 to provide for modification of a confirmed plan in a chapter 11 case of an individual debtor. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

Rule 4002. Duties of Debtor

1 (a) IN GENERAL. In addition to performing other duties
2 prescribed by the Code and rules, the debtor shall:
3 (1) attend and submit to an examination at the times
4 ordered by the court;

5 (2) attend the hearing on a complaint objecting to
6 discharge and testify, if called as a witness;
7 (3) inform the trustee immediately in writing as to the
8 location of real property in which the debtor has an interest
9 and the name and address of every person holding money or
10 property subject to the debtor's withdrawal or order if a
11 schedule of property has not yet been filed pursuant to Rule
12 1007;
13 (4) cooperate with the trustee in the preparation of an
14 inventory, the examination of proofs of claim, and the
15 administration of the estate; and
16 (5) file a statement of any change of the debtor's
17 address.
18 (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE
19 DOCUMENTATION.
20 (1) *Personal Identification.* Every individual debtor
21 shall bring to the meeting of creditors under § 341:

22 (A) a picture identification issued by a
23 governmental unit, or other personal identifying information
24 that establishes the debtor's identity; and
25 (B) evidence of social security number(s), or a
26 written statement that such documentation does not exist.
27 (2) *Financial Information.* Every individual debtor
28 shall bring to the meeting of creditors under § 341 and make
29 available to the trustee the following documents or copies of
30 them, or provide a written statement that the documentation
31 does not exist or is not in the debtor's possession:
32 (A) evidence of current income such as the most
33 recent payment advice;
34 (B) unless the trustee or the United States trustee
35 instructs otherwise, statements for each of the debtor's
36 depository and investment accounts, including checking,
37 savings, and money market accounts, mutual funds and

38 brokerage accounts for the time period that includes the date
39 of the filing of the petition; and
40 (C) documentation of monthly expenses claimed
41 by the debtor when required by § 707(b)(2)(A) or (B).
42 (3) *Tax Return.* At least 7 days before the first date
43 set for the meeting of creditors under § 341, the debtor shall
44 provide to the trustee a copy of the debtor's Federal income
45 tax return for the most recent tax year ending immediately
46 before the commencement of the case and for which a return
47 was filed, including any attachments, or a transcript of the tax
48 return, or provide a written statement that the documentation
49 does not exist.
50 (4) *Tax Returns Provided to Creditors.* If a creditor,
51 at least 15 days before the first date set for the meeting of
52 creditors under § 341, requests a copy of the debtor's tax
53 return that is to be provided to the trustee under subdivision
54 (b)(3), the debtor shall provide to the requesting creditor a

55 copy of the return, including any attachments, or a transcript
56 of the tax return, or provide a written statement that the
57 documentation does not exist at least 7 days before the first
58 date set for the meeting of creditors under § 341.
59 (5) The debtor's obligation to provide tax returns
60 under Rule 4002(b)(3) and (b)(4) is subject to procedures for
61 safeguarding the confidentiality of tax information established
62 by the Director of the Administrative Office of the United
63 States Courts.

COMMITTEE NOTE

This rule is amended to implement the directives of § 521(a)(1)(B)(iv) and (e)(2) of the Code, which were added by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's Federal income tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under § 707(b)(2)(A) and (B).

Subdivision (b) is also amended to require the debtor to cooperate with the trustee by providing materials and documents

necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. The rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor possesses. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors other than the Attorney General. Some of the documents may contain otherwise private information that should not be disseminated. For example, pay stubs and financial account statements might include the social security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social security numbers and the names of any minors when they appear in these documents. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Tax information produced under this rule is subject to procedures for safeguarding confidentiality established by the Director of the Administrative Office of the United States Courts.

Rule 4003. Exemptions

* * * * *

1 (b) OBJECTING TO A CLAIM OF EXEMPTIONS.

2 (1) Except as provided in paragraph (2), a ~~A~~ party in
3 interest may file an objection to the list of property claimed as
4 exempt ~~only~~ within 30 days after the meeting of creditors held
5 under § 341(a) is concluded or within 30 days after any
6 amendment to the list or supplemental schedules is filed,
7 whichever is later. The court may, for cause, extend the time
8 for filing objections if, before the time to object expires, a
9 party in interest files a request for an extension.

10 (2) An objection to a claim of exemption based on
11 § 522(q) shall be filed before the closing of the case. If an
12 exemption is first claimed after a case is reopened, an
13 objection shall be filed before the reopened case is closed.

14 (3) Copies of the objections shall be delivered or

15 mailed to the trustee, the person filing the list, and the

16 attorney for that person.

17 * * * * *

COMMITTEE NOTE

Subdivision (b) is amended to reflect the 2005 addition of subsection (q) to § 522 of the Bankruptcy Code. Section 522(q) imposes a $125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Bankruptcy Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and the 30-day period for objections would not be appropriate for this provision. A new subdivision (b)(2) is added to provide a separate time limit for this provision.

Rule 4004. Grant or Denial of Discharge

1 * * * * *

2 (c) GRANT OF DISCHARGE.

3 (1)

4 * * * * *

5 (F) a motion to extend the time for filing a motion
6 to dismiss the case under Rule 1017(e)~~(1)~~ is pending, ~~or~~
7 (G) the debtor has not paid in full the filing fee
8 prescribed by 28 U.S.C. § 1930(a) and any other fee
9 prescribed by the Judicial Conference of the United States
10 under 28 U.S.C. § 1930(b) that is payable to the clerk upon
11 the commencement of a case under the Code, unless the court
12 has waived the fees under 28 U.S.C. § 1930(f);
13 (H) the debtor has not filed with the court a
14 statement regarding completion of a course in personal
15 financial management as required by Rule 1007(b)(7);
16 (I) a motion to delay or postpone discharge under
17 § 727(a)(12) is pending; or
18 (J) a presumption that a reaffirmation agreement
19 is an undue hardship has arisen under § 524(m).

COMMITTEE NOTE

Subdivision (c)(1)(G) is amended to reflect the fee waiver provision added in 2005 to 28 U.S.C. § 1930.

Subdivision (c)(1)(H) is new. It reflects the 2005 addition to the Bankruptcy Code of §§ 727(a)(11) and 1328(g), which require that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. Including this requirement in the rule helps prevent the inadvertent entry of a discharge when the debtor has not complied with this requirement. If a debtor fails to file the required statement regarding a personal financial management course, the clerk will close the bankruptcy case without the entry of a discharge.

Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Bankruptcy Code of § 727(a)(12). This provision is linked to § 522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that § 522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It reflects the 2005 revisions to § 524 of the Bankruptcy Code that alter the requirements for approval of reaffirmation agreements. Section 524(m) sets forth circumstances under which a reaffirmation agreement is presumed to be an undue hardship. This triggers an obligation to review the presumption and may require notice and a hearing. Subdivision (c)(1)(J) has been added to prevent the discharge from being entered until the court approves or disapproves the reaffirmation agreement in accordance with § 524(m).

Rule 4006. Notice of No Discharge

1 If an order is entered denying or revoking a discharge or
2 if a waiver of discharge is filed, the clerk, after the order
3 becomes final or the waiver is filed, or, in the case of an
4 individual, if the case is closed without the entry of an order
5 of discharge, shall promptly give notice thereof to all ~~creditors~~
6 parties in interest in the manner provided in Rule 2002.

COMMITTEE NOTE

Rule 4006 is amended to reflect the 2005 revisions to the Bankruptcy Code requiring that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, no discharge will be entered, but the case may be closed. The amended rule provides notice to parties in interest, including the debtor, that no discharge was entered.

Rule 4007. Determination of Dischargeability of a Debt

1 * * * * *

2 (c) TIME FOR FILING COMPLAINT UNDER § 523(c)
3 IN A CHAPTER 7 LIQUIDATION, CHAPTER 11
4 REORGANIZATION, ~~OR~~ CHAPTER 12 FAMILY

5 FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER
6 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE
7 OF TIME FIXED. Except as provided in subdivision (d), a
8 ~~A~~ complaint to determine the dischargeability of a debt under
9 § 523(c) shall be filed no later than 60 days after the first date
10 set for the meeting of creditors under § 341(a). The court
11 shall give all creditors no less than 30 days' notice of the time
12 so fixed in the manner provided in Rule 2002. On motion of
13 a party in interest, after hearing on notice, the court may for
14 cause extend the time fixed under this subdivision. The
15 motion shall be filed before the time has expired.
16 (d) TIME FOR FILING COMPLAINT UNDER § ~~523(c)~~
17 523(a)(6) IN CHAPTER 13 INDIVIDUAL'S DEBT
18 ADJUSTMENT CASE; NOTICE OF TIME FIXED. On
19 motion by a debtor for a discharge under § 1328(b), the court
20 shall enter an order fixing the time to file a complaint to
21 determine the dischargeability of any debt under § ~~523(c)~~

22 523(a)(6) and shall give no less than 30 days' notice of the
23 time fixed to all creditors in the manner provided in Rule
24 2002. On motion of any party in interest after hearing on
25 notice the court may for cause extend the time fixed under
26 this subdivision. The motion shall be filed before the time
27 has expired.
28 * * * * *

COMMITTEE NOTE

Subdivision (c) is amended to reflect the 2005 amendments to § 1328(a) of the Bankruptcy Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c).

The amendment to subdivision (d) reflects the 2005 amendments to § 1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, the need for subdivision (d) is now limited to that provision.

Rule 4008. Discharge and Reaffirmation Hearing

1 Not more than 30 days following the entry of an order
2 granting or denying a discharge, or confirming a plan in a
3 chapter 11 reorganization case concerning an individual
4 debtor and on not less than 10 days notice to the debtor and
5 the trustee, the court may hold a hearing as provided in
6 § 524(d) of the Code. A motion by the debtor for approval of
7 a reaffirmation agreement shall be filed before or at the
8 hearing. The debtor's statement required under § 524(k) shall
9 be accompanied by a statement of the total income and total
10 expense amounts stated on schedules I and J. If there is a
11 difference between the income and expense amounts stated on
12 schedules I and J and the statement required under § 524(k),
13 the accompanying statement shall include an explanation of
14 any difference.

COMMITTEE NOTE

Rule 4008 is amended to reflect the 2005 addition of §§ 524(k)(6)(A) and 524(m) to the Bankruptcy Code. These

provisions require that a debtor file a signed statement in support of a reaffirmation agreement, and authorize a court to review the agreement if, based on the assertions on the statement, the agreement is presumed to be an undue hardship. The rule revision requires that an accompanying statement show the total income and expense amounts stated on schedules I and J and an explanation of any discrepancies. This will allow the court to evaluate the reaffirmation for undue hardship as § 524(m) requires. A corresponding change has been made to Rule 4004(c) to prevent the entry of a discharge until the court has approved or disapproved the reaffirmation agreement in accordance with § 524(m).

Rule 5003. Records Kept By the Clerk

1 * * * * *

2 (e) REGISTER OF MAILING ADDRESSES OF
3 FEDERAL AND STATE GOVERNMENTAL UNITS <u>AND</u>
4 <u>CERTAIN TAXING AUTHORITIES</u>. The United States or
5 the state or territory in which the court is located may file a
6 statement designating its mailing address. <u>The United States,</u>
7 <u>state, territory, or local governmental unit responsible for the</u>
8 <u>collection of taxes within the district in which the case is</u>
9 <u>pending may file a statement designating an address for</u>
10 <u>service of requests under § 505(b) of the Code, and the</u>

11 designation shall describe where further information
12 concerning additional requirements for filing such requests
13 may be found. The clerk shall keep, in the form and manner
14 as the Director of the Administrative Office of the United
15 States Courts may prescribe, a register that includes ~~these~~ the
16 mailing addresses designated under this subdivision, but the
17 clerk is not required to include in the register more than one
18 mailing address for each department, agency, or
19 instrumentality of the United States or the state or territory.
20 If more than one address for a department, agency, or
21 instrumentality is included in the register, the clerk shall also
22 include information that would enable a user of the register to
23 determine the circumstances when each address is applicable,
24 and mailing notice to only one applicable address is sufficient
25 to provide effective notice. The clerk shall update the register
26 annually, effective January 2 of each year. The mailing
27 address in the register is conclusively presumed to be a proper

28 address for the governmental unit, but the failure to use that
29 mailing address does not invalidate any notice that is
30 otherwise effective under applicable law.

31 * * * * *

COMMITTEE NOTE

The rule is amended to implement the addition of § 505(b)(1) to the Code in 2005, which allows taxing authorities to designate addresses to use for the service of a request under that subsection.

Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors

1 In a chapter 7 case of an individual with primarily
2 consumer debts in which a presumption of abuse has arisen
3 under § 707(b), the clerk shall give to creditors notice of the
4 presumption of abuse in accordance with Rule 2002 within 10
5 days after the date of the filing of the petition. If the debtor
6 has not filed a statement indicating whether a presumption of
7 abuse has arisen, the clerk shall give notice to creditors within
8 10 days after the date of the filing of the petition that the

9 debtor has not filed the statement and that further notice will
10 be given if a later filed statement indicates that a presumption
11 of abuse has arisen. If a debtor later files a statement
12 indicating that a presumption of abuse has arisen, the clerk
13 shall give notice to creditors of the presumption of abuse as
14 promptly as practicable.

COMMITTEE NOTE

This rule is new. The 2005 revisions to § 342 of the Bankruptcy Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, this rule requires that the clerk send a second notice.

Rule 5012. Communication and Cooperation With Foreign Courts and Foreign Representatives

1 Except for communications for scheduling and
2 administrative purposes, the court in any case commenced by

3 a foreign representative shall give at least 20 days' notice of
4 its intent to communicate with a foreign court or a foreign
5 representative. The notice shall identify the subject of the
6 anticipated communication and shall be given in the manner
7 provided by Rule 2002(q). Any entity that wishes to
8 participate in the communication shall notify the court of its
9 intention not later than 5 days before the scheduled
10 communication.

COMMITTEE NOTE

This rule is new. It implements § 1525 which was added to the Code in 2005. The rule provides an opportunity for parties in the case to take appropriate action prior to the communication between courts or between the court and a foreign representative to establish procedures for the manner of the communication and the right to participate in the communication. Participation in the communication includes both active and passive participation. Parties wishing to participate must notify the court at least 5 days before the hearing so that ample time exists to make arrangements necessary to permit the participation.

Rule 6004. Use, Sale, or Lease of Property

1 * * * * *

2 (g) SALE OF PERSONALLY IDENTIFIABLE
3 INFORMATION.
4 (1) *Motion*. A motion for authority to sell or lease
5 personally identifiable information under § 363(b)(1)(B) shall
6 include a request for an order directing the United States
7 trustee to appoint a consumer privacy ombudsman under
8 § 332. The motion shall be governed by Rule 9014 and shall
9 be served on any committee elected under § 705 or appointed
10 under § 1102 of the Code, or if the case is a chapter 11
11 reorganization case and no committee of unsecured creditors
12 has been appointed under § 1102, on the creditors included on
13 the list of creditors filed under Rule 1007(d), and on such
14 other entities as the court may direct. The motion shall be
15 transmitted to the United States trustee.
16 (2) *Appointment*. If a consumer privacy ombudsman
17 is appointed under § 332, no later than 5 days before the
18 hearing on the motion under § 363(b)(1)(B), the United States

19 trustee shall file a notice of the appointment, including the
20 name and address of the person appointed. The United States
21 trustee's notice shall be accompanied by a verified statement
22 of the person appointed setting forth the person's connections
23 with the debtor, creditors, any other party in interest, their
24 respective attorneys and accountants, the United States
25 trustee, or any person employed in the office of the United
26 States trustee.

27 ~~(g)~~ (h) STAY OF ORDER AUTHORIZING USE, SALE,
28 OR LEASE OF PROPERTY. An order authorizing the use,
29 sale, or lease of property other than cash collateral is stayed
30 until the expiration of 10 days after entry of the order, unless
31 the court orders otherwise.

COMMITTEE NOTE

This rule is amended to implement §§ 332 and 363(b)(1)(B), which were added to the Code in 2005.

Rule 6011. Disposal of Patient Records in Health Care Business Case

1 (a) NOTICE BY PUBLICATION UNDER § 351(1)(A).
2 A notice regarding the claiming or disposing of patient
3 records under § 351(1)(A) shall not identify patients by name
4 or other identifying information, but shall:
5 (1) identify with particularity the health care facility
6 whose patient records the trustee proposes to destroy;
7 (2) state the name, address, telephone number, email
8 address, and website, if any, of a person from whom
9 information about the patient records may be obtained and
10 how those records may be claimed; and
11 (3) state the date by which patient records must be
12 claimed, and that if they are not so claimed the records will be
13 destroyed.
14 (b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to
15 applicable nonbankuptcy law relating to patient privacy, a
16 notice regarding the claiming or disposing of patient records

17 under § 351(1) (B) shall, in addition to including the
18 information in subdivision (a), direct that a patient's family
19 member or other representative who receives the notice
20 inform the patient of the notice, and be mailed to the patient
21 and any family member or other contact person whose name
22 and address have been given to the trustee or the debtor for
23 the purpose of providing information regarding the patient's
24 health care, and to insurance companies known to have
25 provided health care insurance to the patient.
26 (c) PROOF OF COMPLIANCE WITH NOTICE
27 REQUIREMENT. Unless the court orders the trustee to file
28 proof of compliance with § 351(1)(B) under seal, the trustee
29 shall not file, but shall maintain, the proof of compliance for
30 a reasonable time.
31 (d) REPORT OF DESTRUCTION OF RECORDS. The
32 trustee shall file, not later than 30 days after the destruction of
33 patient records under § 351(3), a report certifying that the

34 unclaimed records have been destroyed and explaining the

35 method used to effect the destruction. The report shall not

36 identify patients by name or other identifying information.

COMMITTEE NOTE

This rule is new. It implements § 351(1), which was added to the Code in 2005. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

The variety of health care businesses and the range of current and former patients present the need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (a) of this rule lists the minimum requirements for notices given under § 351(1)(A), and subdivision (b) governs the form of notices under § 351(1)(B). Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal

because the proof of compliance may contain patient names that should or must remain confidential.

Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of the patient shall not be included in the report to protect patient privacy.

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals

* * * * *

1 (f) CERTIFICATION FOR DIRECT APPEAL TO
2 COURT OF APPEALS

3 (1) *Timely Appeal Required.* A certification of a
4 judgment, order, or decree of a bankruptcy court to a court of
5 appeals under 28 U.S.C. § 158(d)(2) shall not be treated as a
6 certification entered on the docket within the meaning of
7 § 1233(b)(4)(A) of Public Law No. 109-8 until a timely
8 appeal has been taken in the manner required by subdivisions

9 (a) or (b) of this rule and the notice of appeal has become
10 effective under Rule 8002.
11 (2) *Court Where Made.* A certification that a
12 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)
13 exists shall be filed in the court in which a matter is pending
14 for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter
15 is pending in a bankruptcy court until the docketing of the
16 appeal of a final judgment, order, or decree in accordance
17 with Rule 8007(b) or the grant of leave to appeal an
18 interlocutory judgment, order, or decree under 28 U.S.C.
19 § 158(a). A matter is pending in a district court or bankruptcy
20 appellate panel after an appeal of an interlocutory judgment,
21 order, or decree has been docketed in accordance with Rule
22 8007(b) or leave to appeal has been granted under 28 U.S.C.
23 § 158(a).
24 (A) *Certification by Court on Request or Court's*
25 *Own Initiative.*

26 (i) *Before Docketing or Grant of Leave to*
27 *Appeal.* Only a bankruptcy court may make a certification on
28 request or on its own initiative while the matter is pending in
29 the bankruptcy court.
30 (ii) *After Docketing or Grant of Leave to*
31 *Appeal.* Only the district court or bankruptcy appellate panel
32 involved may make a certification on request of the parties or
33 on its own initiative while the matter is pending in the district
34 court or bankruptcy appellate panel.
35 (B) *Certification by All Appellants and Appellees*
36 *Acting Jointly.* A certification by all the appellants and
37 appellees, if any, acting jointly may be made by filing the
38 appropriate Official Form with the clerk of the court in which
39 the matter is pending. The certification may be accompanied
40 by a short statement of the basis for the certification, which
41 may include the information listed in subdivision (f)(3)(C) of
42 this rule.

43 (3) *Request for Certification; Filing; Service;*
44 *Contents.*
45 (A) A request for certification shall be filed,
46 within the time specified by 28 U.S.C. § 158(d)(2), with the
47 clerk of the court in which the matter is pending.
48 (B) Notice of the filing of a request for
49 certification shall be served in the manner required for service
50 of a notice of appeal under Rule 8004.
51 (C) A request for certification shall include the
52 following:
53 (i) the facts necessary to understand the
54 question presented;
55 (ii) the question itself;
56 (iii) the relief sought;
57 (iv) the reasons why the appeal should be
58 allowed and is authorized by statute or rule, including why a

59 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)
60 exists; and
61 (v) an attached copy of the judgment, order, or
62 decree complained of and any related opinion or
63 memorandum.
64 (D) A party may file a response to a request for
65 certification or a cross-request within 10 days after the notice
66 of the request is served, or another time fixed by the court.
67 (E) The request, cross request, and any response
68 shall not be governed by Rule 9014 and shall be submitted
69 without oral argument unless the court otherwise directs.
70 (F) A certification of an appeal under 28 U.S.C.
71 § 158(d)(2) shall be made in a separate document served on
72 the parties.
73 (4) *Certification on Court's Own Initiative.*
74 (A) A certification of an appeal on the court's own
75 initiative under 28 U.S.C. § 158(d)(2) shall be made in a

76 separate document served on the parties in the manner
77 required for service of a notice of appeal under Rule 8004.
78 The certification shall be accompanied by an opinion or
79 memorandum that contains the information required by
80 subdivision (f)(3)(C)(i)-(iv) of this rule.
81 (B) A party may file a supplementary short
82 statement of the basis for certification within 10 days after the
83 certification.

COMMITTEE NOTE

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative or in response to a request of a party. Certification also can be made by all of the appellants and appellees. An uncodified provision in Public Law No. 109-8, § 1233(b)(4), requires that, not later than 10 days after a certification is entered on the docket, there must be filed with the circuit clerk a petition requesting permission to appeal. Given the short time limit to file the petition with the circuit clerk, subdivision (f)(1) provides that entry of a certification on the docket does not occur until an effective appeal is taken under Rule 8003(a) or (b).

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the "docketing" under Rule 8007(b) of an appeal of a final judgment, order or decree, or the granting of leave to appeal an interlocutory judgment, order or decree, whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court's own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.

Rule 8003. Leave to Appeal

1 * * * * *

2 (d) If leave to appeal is required by 28 U.S.C. § 158(a)

3 and has not earlier been granted, the authorization of a direct

4 appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall

5 be deemed to satisfy the requirement for leave to appeal.

COMMITTEE NOTE

The rule is amended to add subdivision (d) to solve the jurisdictional problem that could otherwise ensue when a district court or bankruptcy appellate panel has not granted leave to appeal under 28 U.S.C. § 158(a)(3). If the court of appeals accepts the appeal, the requirement of leave to appeal is deemed satisfied. However, if the court of appeals does not authorize a direct appeal, the question of whether to grant leave to appeal remains a matter to be resolved by the district court or the bankruptcy appellate panel.

Rule 9006. Time

1 * * * * *

2 (b) ENLARGEMENT.

3 (1) In General. Except as provided in paragraphs (2)
4 and (3) of this subdivision, when an act is required or allowed
5 to be done at or within a specified period by these rules or by
6 a notice given thereunder or by order of court, the court for
7 cause shown may at any time in its discretion (1) with or
8 without motion or notice order the period enlarged if the
9 request therefor is made before the expiration of the period
10 originally prescribed or as extended by a previous order or (2)

11 on motion made after the expiration of the specified period
12 permit the act to be done where the failure to act was the
13 result of excusable neglect.

14 (2) Enlargement Not Permitted. The court may not
15 enlarge the time for taking action under Rules 1007(d),
16 2003(a) and (d), 7052, 9023, and 9024.

17 (3) Enlargement Limited. The court may enlarge the
18 time for taking action under Rules 1006(b)(2), 1007(c) with
19 respect to the time to file schedules and statements in a small
20 business case, 1017(e), 3002(c), 4003(b), 4004(a), 4007(c),
21 8002 and 9033, only to the extent and under the conditions
22 stated in those rules.

23 * * * * *

COMMITTEE NOTE

Section 1116(3) of the Code, as amended in 2005, places specific limits on the time for filing schedules and a statement of affairs in small business cases. The rule is amended to recognize that extensions of time for filing these documents are governed by Rule 1007(c), which is amended to recognize restrictions on expanding the time to file these documents in small business cases.

Rule 9009. Forms

1 The Official Forms prescribed by the Judicial
2 Conference of the United States shall be observed and used
3 with alterations as may be appropriate. Forms may be
4 combined and their contents rearranged to permit economies
5 in their use. The Director of the Administrative Office of the
6 United States Courts may issue additional forms for use under
7 the Code. The forms shall be construed to be consistent with
8 these rules and the Code. References in the Official Forms to
9 these rules shall include the Interim Rules approved by the
10 Committee on Rules of Practice and Procedure to implement
11 Public Law No. 109-8.

COMMITTEE NOTE

The Official Forms refer to the Federal Rules of Bankruptcy Procedure. This rule is amended so that the reference to rules in the Official Forms includes the Interim Rules that implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law Number 109-8).