

Agenda E-20 (Appendix C)
Rules
September 1990

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

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June 12, 1990

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Honorable Joseph F. Weis, Jr.
Chairman, Committee on Rules of
Practice and Procedures of the
Judicial Conference of the United States
Washington, D. C. 20544

Dear Judge Weis:

On behalf of the Advisory Committee on Bankruptcy Rules, I have the honor to transmit for consideration by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, proposed amendments to the Bankruptcy Rules.

Most of these amendments are made necessary by the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, signed by the President on October 24, 1986. The 1986 Act has made the United States Trustee system permanent and nationwide and has expanded the role of the United States Trustees in bankruptcy cases. The Act also created a new chapter 12 of the Bankruptcy Code, entitled "Adjustment of Debts of a Family Farmer with Regular Income," to provide needed financial relief for family farmers. Most proposed amendments to the Bankruptcy Rules are intended to accommodate the provisions of the 1986 Act.

Several amendments are proposed to implement the provisions of the Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100-334, which made substantive amendments to chapter 11 of the Bankruptcy Code. In addition, several amendments that are unrelated to the 1986 and 1988 Acts are proposed to improve the rules.

The preliminary draft of proposed changes to the rules was circulated to members of the bench and bar in August, 1989. The highlights of the preliminary draft are listed in the preface to the preliminary draft, a copy of which is enclosed for your convenience.

Comments were received from 49 respondents after publication of the preliminary draft. Public hearings to afford interested

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persons the opportunity to express their views were held in San Francisco in January, and in Washington, D. C. and Dallas in February, 1990. The Advisory Committee considered the testimony of each witness and the written comments of each respondent at meetings immediately following each public hearing, and at three subsequent meetings in March, April, and May, 1990. As a result of the testimony and written comments, the Advisory Committee has made several changes to the preliminary draft. The changes are explained in the enclosed memorandum dated June 5, 1990.

The Advisory Committee is also recommending revisions to the Official Forms that will be transmitted in a separate package.

The product of the committee is the result of the combined effort of many dedicated individuals including, among others, judges, practitioners and academicians. All spent countless hours in travel, study and debate with an eye single to the improvement of the bankruptcy system. I wish to express my deep gratitude and admiration for the valuable contributions of everyone involved. It was a rare privilege to be a part of such an undertaking.

Each member brought special talents and skills which produced an ideally balanced committee. The senior member of the committee, Professor Lawrence P. King, of the New York University School of Law, brought a keen intellect, a historical perspective of the committee's past work, and an unparalleled knowledge of the bankruptcy system.

A number of respected and talented practitioners ably represented the Bar: Joseph Patchan of Baker and Hostetler; Herbert P. Minkle Jr. of Freid, Frank, Harris, Shriver and Jacobson; Bernard Shapiro of Gendel, Raskoff, Shapiro and Quittner; Ralph R. Mabey of LeBoeuf, Lamb, Leiby and MacRae; and Harry D. Dixon of Dixon and Dixon. Each of the practitioners brought invaluable, scholarly and practical insights to the committee. Two of these, Joseph Patchan and Ralph Mabey, are former bankruptcy judges.

Every member of the bench served with distinction. Circuit Judges Edith Hollan Jones of the Fifth Circuit Court of Appeals and Edward Leavy of the Ninth Circuit Court of Appeals made significant and unique contributions. Judge Jones has substantial experience as both a practitioner and a judge. Her knowledge, combined with the uncanny common sense approach of Judge Leavy, added a dimension absolutely essential to the success of this undertaking.

District Judge Joseph L. McGlynn, Jr. of the Eastern District of Pennsylvania, with his many years of distinguished service, provided practical observations of great consequence. District Judge Malcolm Howard of the Eastern District of North

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Carolina, a newcomer to the committee, brought with him significant bankruptcy experience, especially in the area of Chapter 13. He also provided meaningful direction to the committee.

Three of the nation's outstanding bankruptcy judges, Chief Judge Paul Mannes of the District of Maryland, Judge James Meyers of the Southern District of California, and Judge James Barta of the Eastern District of Missouri, served on the committee. As active bankruptcy judges, they injected an indispensable ingredient of realism into our work.

Our committee's reporter, Professor Alan N. Resnick of Hofstra University School of Law, is a person with uncommon intellect and skills. He objectively addressed every inquiry and issue with which this committee dealt. His memos before each meeting permitted the committee to review and evaluate alternative approaches and propose appropriate changes. Professor Resnick was the key to the committee's productive effort.

Although not committee members, others also contributed significantly to the project. We all express gratitude to Chief Judge Thomas Wiseman of the Middle District of Tennessee, who previously served the committee for many years. This committee's work reflects his many contributions. Furthermore, your decision, Judge Weis, to assign Reece Bader from the Standing Committee to work with us is evidence of your own foresight and administrative abilities. Mr. Bader attended almost all of our meetings. His substantial sacrifice was matched by a most important contribution: he kept the Standing Committee appraised of our actions. His work allowed you to give us gentle direction and enabled you to promptly assess our work as we progressed.

In addition, Richard Heltzel, a bankruptcy clerk from the Eastern District of California, assisted the committee. While not a formal committee member, he attended every meeting providing practical insights and understandings that improved our product substantially.

Since much of our work involved modifying the rules relating to the U.S. Trustee, Thomas Stanton, former Director of the Executive Office for U.S. Trustees, and John E. Logan, Acting Director of the Executive Office for U.S. Trustees, provided invaluable assistance. We express our gratitude for their contribution.

Our committee's work was coordinated with the Bankruptcy Committee which is ably chaired by District Judge Morey L. Sear, Eastern District of Louisiana. Judge Sear has been generous with his time and talents, providing information and useful guidance to our committee.

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It has been an honor for all of us to serve under your able leadership. Throughout the project, we felt your total support and are grateful for your wise counsel. We extend special thanks to Director L. Ralph Mecham and James E. Macklin, Jr., Deputy Director and Secretary to our committee. We also appreciate the essential work performed by Peter McCabe, Assistant Director of the Administrative Office, who oversaw both this and the forms project. Further, we commend Ms. Patricia Channon for her valuable assistance to Mr. McCabe. We recognize that the support of the entire Administrative Office was essential to the success of this project.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lloyd D. George", with a horizontal line extending from the end of the signature.

LLOYD D. GEORGE

PREFACE TO PRELIMINARY DRAFT OF
PROPOSED AMENDMENTS TO THE BANKRUPTCY RULES
[PUBLISHED AUGUST 1989]

The primary task of the Advisory Committee on Bankruptcy Rules since January, 1988, has been to propose amendments to the Bankruptcy Rules necessary to implement the provisions of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554 (1986 Act). At the same time, the Advisory Committee considered various suggestions for amendments to improve the rules that were proposed by the bench and bar, members of the Advisory Committee, and the Reporter. A number of these suggestions are included in the proposed amendments. The Advisory Committee also considered and proposes several amendments to the rules necessary to implement the provisions of the Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100-334, which made substantive amendments to chapter 11 of the Bankruptcy Code.

SIGNIFICANT PROVISIONS OF THE PROPOSED AMENDMENTS

The significant proposed amendments in the order in which they appear in the rules are:

(1) Rule 1002 is amended to require the clerk to transmit to the United States trustee a copy of the petition commencing the case. Because Part X of the rules is abrogated by the proposed amendments, many rules throughout Parts I-IX are amended to include provisions dealing with the United States trustee. The first such change is in Rule 1002. Other rules similarly require the transmission of various papers to the United States trustee on or after filing with the court.

(2) Rule 1007 is amended to delete references to specific Official Form numbers and to delete the requirement for filing a Chapter 13 Statement. A debtor in a chapter 13 case will be required to file schedules and a statement of financial affairs. The Advisory Committee is in the process of revising the Official Forms, and it is anticipated that the Chapter 13 Statement will be abrogated and that the information presently contained in the Chapter 13 Statement will be included in the revised schedules and statement of financial affairs. All references to specific Official Form numbers in other rules are also deleted to facilitate future revisions and renumbering of the Official Forms.

(3) Rule 1017 is amended to conform to the 1986 amendment to § 707(b) of the Code which permits the United States trustee

to file a motion to dismiss an individual's chapter 7 case for substantial abuse of that chapter. Two new paragraphs have been added to Rule 1017(e) to create a time limit for motions to dismiss under § 707(b).

(4) Rule 1019, governing conversion of a case to chapter 7, is amended to include conversion of a case from chapter 12, to reduce the time for filing a schedule of postpetition debts when the case is converted, and to conform the time for filing postpetition claims to the time for filing prepetition claims.

(5) Rule 2003, governing meetings of creditors or equity security holders, is amended to provide for such meetings in chapter 12 cases and to conform to the 1986 Act which gives the United States trustee the duty to call and preside at the meetings.

(6) Rule 2007, governing the appointment of a creditors' committee organized before the commencement of the case, is amended to conform to the 1986 Act which provides that the United States trustee appoints committees in chapter 11 cases. The amendments to the rule provide a procedure for judicial review of the appointment of a prepetition committee.

(7) Rule 2007.1 is new and provides a procedure to be used by the United States trustee in obtaining court approval of the appointment of a trustee or examiner in a chapter 11 case.

(8) Rule 2011 is amended to provide for the clerk's certification that a trustee has qualified. A new subdivision is added to require the clerk to notify the court and the United States trustee if the person selected as trustee does not timely qualify.

(9) Rule 2013 is amended to delete limitations on appointments of trustees, examiners, appraisers and auctioneers based on disproportionate or excessive fees. This matter is left for regulation by the United States trustee.

(10) Rule 2014, governing the employment of professional persons, is amended to include persons employed by a committee of retired employees as contemplated by § 1114 of the Code. In addition, the rule is amended to require the application for court approval of employment of professional persons to disclose connections with the United States trustee or persons employed in the United States trustee's office.

(11) Rule 2015 is amended to delete the requirement that, in every county in which the debtor's real property is located, the trustee or debtor in possession file a notice or copy of the petition in the office where a transfer of real property may be recorded. The rule also is amended to conform to the 1986 Act by

requiring that the trustee or debtor in a chapter 11 case file a quarterly statement of disbursements and the amount of the fee paid to the United States trustee pursuant to 28 U.S.C. § 1930(a)(6). A new subdivision is added to require that the debtor in a chapter 12 case perform certain duties to keep records, make reports and give notice of the case.

(12) Rule 2020 is new and provides that a proceeding to contest an act or failure to act by the United States trustee is a contested matter governed by Rule 9014.

(13) Rule 3001 is amended to limit the court's role in connection with transfers of claims.

(14) Rule 3002 is amended to conform to the 1986 Act by providing a time period for filing a proof of claim in a chapter 12 case consistent with expedited procedures in such cases. For the same reason, Rules 3004 and 3005 are amended to provide shorter periods of time for the filing of claims by a debtor, trustee, or codebtor in chapter 12 cases.

(15) Rule 3017 is amended to give the court the discretion to direct that disclosure statements shall not be sent to unimpaired classes.

(16) Rule 3018, governing acceptance or rejection of chapter 11 plans, is amended to give the court discretion to permit a creditor or equity security holder to change or withdraw a vote whether or not the time fixed for voting has expired.

(17) Rule 4001 is amended to provide that procedures relating to a motion for relief from the automatic stay also apply to a request to prohibit or condition the use, sale, or lease of property as is necessary to provide adequate protection pursuant to § 363(e) of the Code. In addition, the rule is amended to avoid the necessity of further notice to parties when the court is asked to approve an agreement in settlement of a motion relating to those matters covered by the rule and the notice of the original motion was sufficient to afford reasonable notice of the material provisions of the agreement.

(18) Rule 4007 is amended to apply in chapter 12 cases the same time period that applies in chapter 7 and chapter 11 cases for filing a complaint to determine the dischargeability of certain debts under § 523(c) of the Code.

(19) Rule 5002, governing restrictions on appointments or employment of relatives or other persons connected with the bankruptcy judge, is amended to limit its application to appointments and employment that require court approval under the 1986 Act. In addition, the rule is expanded to include relatives or other persons connected with the United States trustee, but

permits approval of the employment of such an individual as attorney or other professional unless the court finds that the employment would be improper under the circumstances of the case.

(20) Rule 5009 is amended to provide a procedure for closing chapter 7, chapter 12, and chapter 13 cases.

(21) Rule 6003, governing the disbursement of money of the estate, is abrogated in view of the United States trustee's role in supervising trustees.

(22) Rule 7062, governing the stay of proceedings to enforce a judgment, is amended to provide additional exceptions to 62(a) F.R.Civ.P., including an order authorizing the assumption or assignment of an executory contract or unexpired lease.

(23) Rule 8002 is amended to avoid the loss of the right to appeal when a notice of appeal is filed prematurely.

(24) Rule 9027 is amended to require parties to allege whether a removed proceeding is core or non-core and, if non-core, whether they consent to the entry of final orders and judgments by the bankruptcy judge. The rule is also amended to conform to the 1988 amendments to 28 U.S.C. § 1446 which abrogated the requirement for a bond and which substituted the notice of removal for the application for removal.

(25) Rule 9034 is new and requires that copies of pleadings, motions, objections, and other papers relating to certain matters be transmitted to the United States trustee.

(26) Rule 9035 is new and provides that in cases in judicial districts in Alabama and North Carolina in which a United States trustee is not authorized to act, the rules apply only to the extent that they are not inconsistent with the provisions of the Code and Title 28 that are effective in such cases. This rule is necessary because the 1986 Act provides that the United States trustee system is not effective in a district in Alabama or North Carolina until the district elects to be included or October 1, 1992, whichever occurs first.

(27) Part X, governing United States trustees, is abrogated. Part X was designed to apply only in the United States trustee pilot districts designated under chapter 15 of the Code. Because chapter 15 was repealed and the pilot program was replaced by a permanent nationwide United States trustee system, the provisions of Part X, modified to conform to the 1986 Act, are integrated into Parts I through IX.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF
CIVIL PROCEDURE

The Advisory Committee on Civil Rules has proposed amendments to the Federal Rules of Civil Procedure, including amendments to Rule 4, Service of Process. Certain subdivisions of Rule 4 are made applicable in cases under the Bankruptcy Code by Bankruptcy Rules 1010, 7004 and 9014. Several other proposed amendments to the Federal Rules of Civil Procedure would apply in Bankruptcy Code cases pursuant to Parts VII and IX of the Bankruptcy Rules. The proposed amendments to the Federal Rules of Civil Procedure will be published for comments by the Bench and Bar simultaneously with other proposed amendments to the Bankruptcy Rules.

ADVISORY COMMITTEE ON
BANKRUPTCY RULES

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Prof. Alan N. Resnick, Reporter

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LLOYD D GEORGE
BANKRUPTCY RULES

June 5, 1990

TO: Hon. Joseph F. Weis, Jr., Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Lloyd D. George, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Explanation of Changes Made Subsequent to the Original
Publication of the August 1989 Preliminary Draft of
Proposed Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules considered the testimony of each witness at the public hearings held in San Francisco, California on January 18, 1990; in Washington, D.C. on February 1, 1990; and in Dallas, Texas on February 15, 1990, as well as all communications received from interested individuals and groups who responded to the Committee's request for comment. Correction of typographical errors, changes in punctuation, and changes in language for clarification and to make similar rules consistent have been made.

The significant changes made by the Advisory Committee subsequent to the original publication of the preliminary draft of proposed amendments to the rules in August, 1989 are:

PART I
COMMENCEMENT OF CASE; PROCEEDINGS
RELATING TO PETITION AND
ORDER FOR RELIEF

Rule 1002. Commencement of Case.

A paragraph has been added to the Committee Note to refer to Rule 5005(b)(3) which relieves the clerk of the bankruptcy court of the duty to transmit papers, including a copy of the petition, to the United States trustee if the United States trustee requests that such papers not be transmitted.

Rule 1007. Lists, Schedules and Statements; Time Limits.

Subdivision (g). Partnership and Partners. This subdivision provides that the court may order any general partner of the debtor partnership to file a statement of personal assets and liabilities "with the court." The words "with the court" have been deleted as unnecessary in view of Rules 5005(a) and 9001(3) which make it clear that the word "file" means to file with the clerk. The deletion of these words are consistent with the changes made in other rules. The Committee Note reflects this change.

Rule 1010. Service of Involuntary Petition and Summons; Petition Commencing Ancillary Case.

A paragraph has been added to the Committee Note to indicate that, pursuant to new subdivision (g) of Rule 7004, references to F.R.Civ.P. 4(g) and (h) in Bankruptcy Rule 1010 means the version of F.R.Civ.P. Rule 4(g) and (h) in effect on January 1, 1990, notwithstanding any subsequent amendments to the Civil Rules. See the discussion of changes that have been made to Rule 7004.

Rule 1017. Dismissal or Conversion of Case; Suspension.

References to dismissal of a "petition" have been changed to dismissal of a "case" throughout Rule 1017 to conform the language to that used in the dismissal sections of the Bankruptcy Code. A paragraph has been added to the Committee Note to explain the change.

Subdivision (e). Dismissal of Individual Debtor's Chapter 7 Case for Substantial Abuse. The 60-day time period for the United States trustee to file a motion to dismiss for substantial abuse of chapter 7, or for service of the notice of hearing when the issue is raised on the court's own initiative, has been changed so that it commences on the first date set for the meeting of creditors instead of the date on which the debtor first appears for examination at the meeting of creditors. This change conforms to the period for filing a complaint objecting to discharge under Rule 4004.

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 Chapter 7 Liquidation Case

Paragraph (5) has been changed to clarify that the debtor in possession or trustee in a superseded case has the duty to transmit to the United States trustee the final report and

account that is filed with the court, but the clerk has the duty to transmit to the United States trustee the schedule of unpaid debts incurred after the commencement of the superseded case.

Paragraph (6) has been changed to eliminate the need for a court order fixing the time for filing postpetition claims that arose during the superseded case. The time for filing such claims is provided in the paragraph. It is anticipated that the clerk will give notice of the time limitation on filing such claims together with the notice of the meeting of creditors. This paragraph has been changed further to avoid the need to fix a time for filing claims arising from the rejection of an executory contract if there are no assets available for distribution upon conversion. If assets become available for distribution at a later time, the court may fix a time for filing such claims. These changes are reflected in the Committee Note.

PART II
OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS;
EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

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

Subdivision (k). Notices to United States Trustee. A new sentence has been added to the subdivision to provide that neither the clerk nor any other person shall be required to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. This provision is added because cases under SIPA are conducted in the bankruptcy court but are not title 11 cases.

Rule 2003. Meeting of Creditors or Equity Security Holders.

Subdivision (a). Date and Place. The last sentence of the subdivision has been changed so that the provision enlarging the time for holding the meeting of creditors when the place designated for the meeting is not regularly staffed by the United States trustee or an assistant is applicable in chapter 12 family farmer's debt adjustment cases.

Subdivision (c). Record of Meeting. The sentence added in the original publication of the preliminary draft that requires the docketing of the first appearance of the debtor for examination at the meeting of creditors has been deleted because it is unnecessary in view of the changes that have been made to Rule 1017(e) (supra, page 2) and because the administrative

burden of the docketing requirement would outweigh any benefit.

In addition, the period during which the United States trustee is required to preserve and make available for public access the record of any examination at the meeting of creditors has been changed from one year after the closing of the case to two years after the conclusion of the meeting of creditors. The two-year period is adequate, and measuring the period from the conclusion of the meeting is easier for the United States trustee to administer.

Subdivision (g). Final Meeting. The original publication of the preliminary draft provided that the clerk shall mail to creditors a summary of the trustee's final account if the United States trustee calls a final meeting and the net proceeds realized exceeds \$250. The amount has been changed from \$250 to \$1,500 to conform to the proposed amendment to Rule 2002(f).

The Committee Note has been changed to be consistent with these changes.

Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case.

The Committee Note has been changed to clarify that a finding that a prepetition committee has not been fairly chosen does not prohibit the appointment of some or all of its members to the creditors' committee. It also has been changed to clarify that, although this rule deals with prepetition committees only, judicial review regarding the appointment of other committees is available under Rule 2020.

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

Subdivision (b). Approval of Appointment. The original publication of the preliminary draft required that a United States trustee's application for approval of the appointment of a trustee or examiner in a chapter 11 case include "specific facts showing that the appointment was made after consultation with parties in interest." This provision has been changed to require that the application include the "names of the parties in interest with whom the United States trustee consulted regarding the appointment."

Rule 2009. Trustees for Estates When Joint Administration Ordered.

Subdivision (f). Separate Accounts. This subdivision has

been redesignated as subdivision (e) because existing subdivision (e) is being abrogated. The Committee Note reflects the change.

Rule 2010. Qualification by Trustee; Proceeding on Bond.

The Committee Note has been changed to indicate that subdivision (c) has been redesignated as subdivision (b) because of the abrogation of current subdivision (b).

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting.

Subdivision (b). Successor Trustee. The original publication of the preliminary draft deleted paragraph (1). This paragraph has been restored to clarify that a successor trustee is automatically substituted for the former trustee in any pending action, proceeding, or matter without the need for a court order. The Committee Note has been changed so that it is consistent with the restoration of paragraph (1).

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

Subdivision (a). Trustee or Debtor in Possession. The new language added in the original publication of the preliminary draft has been changed to delete the words "with the court" after "file." These words are unnecessary in view of Rules 5005(a) and 9001(3) and have been deleted to be consistent with other rules.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses.

Subdivision (b). Disclosure of Compensation Paid or Promised to Attorney for Debtor. The new language added in the original publication of the preliminary draft has been changed to delete the words "with the court" after "A supplemental statement shall be filed." These words are unnecessary in view of Rules 5005(a) and 9001(3) and have been deleted to be consistent with other rules.

**PART III
CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY
INTEREST HOLDERS; PLANS**

Rule 3001. Proof of Claim.

Subdivision (e). Transferred Claim. The phrase "publicly traded bond or debenture" in paragraphs (2), (3), and (4) has been expanded to include publicly traded notes. Transfers of these publicly traded instruments are excluded from the procedural requirements of subdivision (e).

Rule 3002. Filing Proof of Claim or Interest.

Subdivision (c). Time for Filing. The original publication of the preliminary draft provided that in chapter 12 cases proofs of claim shall be filed within five days after the first date set for the meeting of creditors. The time limit for filing proofs of claim in chapter 12 cases has been changed to 90 days after the first date set for the meeting of creditors to conform to the time for filing proofs of claim in chapter 7 and chapter 13 cases. The Committee Note has been amended to reflect this change.

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

Subdivision (c). Filing Proof of Claim. Paragraph (3) has been changed to permit the late filing of claims by infants or incompetent persons in chapter 11 cases under the same circumstances that permit late filings in cases under chapter 7, 12, or 13. The paragraph has been changed further to apply in chapter 11 cases the same time limits applicable in chapters 7, 12, and 13 regarding claims arising from postpetition judgments against the claimant for the recovery of money or property or the avoidance of a lien. It also has been changed to clarify that a claim arising from the rejection of an executory contract or unexpired lease may be filed within such time as the court may direct in a chapter 11 case. The Committee Note has been expanded to explain these changes.

Rule 3004. Filing of Claims by Debtor or Trustee

The amendments included in the original publication of the preliminary draft and the Committee Note have been deleted. The original published amendments provided a time limit for the debtor or trustee to file a proof of claim on behalf of a creditor in a chapter 12 case that is different than the time limit applicable in chapter 7, 11, or 13 cases. The current rule has been restored so that the same time limits apply in all cases.

Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor.

Subdivision (a). Filing of Claim. The amendments to subdivision (a) included in the original publication of the preliminary draft have been deleted so that the time in which a codebtor may file a claim on behalf of a creditor shall be the same in chapter 7, 11, 12, and 13 cases. The amendments in the original publication provided a time period applicable in chapter 12 cases that was shorter than the time periods applicable in other cases. The first paragraph of the Committee Note has been deleted to reflect this change.

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

The Committee Note has been changed to clarify that the proposed amendments to subdivision (a) enlarge the time for filing competing plans. A party in interest may not file a plan without leave of court only if an order approving a disclosure statement relating to another plan has been entered and a decision on confirmation of the plan has not been entered.

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

Subdivision (d). Transmission and Notice to United States Trustee, Creditors and Equity Security Holders. This subdivision has been changed to clarify that, in the event the court orders that any unimpaired class not receive the disclosure statement and plan, such unimpaired class shall nonetheless receive notice of the time fixed for filing objections to and the hearing on confirmation of the chapter 11 plan. Also, the subdivision has been changed to require that such creditors receive notice of the name and address of the person from whom they may request copies of the disclosure statement and plan at the expense of the plan proponent.

The Committee Note has been changed to clarify that the court does not have the discretion under subdivision (d) to dispense with mailing the plan and disclosure statement to governmental units holding tax claims entitled to priority.

Subdivision (e) was added to require the court to consider the procedures for transmitting the plan, disclosure statement, ballot and other materials required to be distributed under subdivision (d) to beneficial holders of stock, bonds, debentures, notes, and other securities, to determine the adequacy of such procedures, and to enter such orders as the court deems appropriate. A new paragraph has been added to the Committee Note to explain the new subdivision (e).

PART IV
THE DEBTOR: DUTIES AND BENEFITS

Rule 4003. Exemptions.

Subdivision (b). **Objections to Claim of Exemptions.** This subdivision has been expanded to provide a 30-day period for objecting to exemptions claimed on a supplemental schedule filed after the original schedule of exemptions. A Committee Note has been added to explain this change.

Rule 4004. Grant or Denial of Discharge.

Subdivision (c). **Grant of Discharge.** This subdivision has been changed to prevent entry of an order of discharge in a chapter 7 case until the time for filing a motion to dismiss the case for substantial abuse under Rule 1017(e) has expired or while such a motion is pending. The Committee Note explains that the purpose of this change is to prevent a timely motion to dismiss the case for substantial abuse from becoming moot because a discharge order has been entered.

PART V
COURTS AND CLERKS

Rule 5005. Filing and Transmittal of Papers.

Subdivision (b). **Transmittal to the United States Trustee.** Paragraph (3) was added to provide that, notwithstanding any rule that requires the clerk to transmit a paper to the United States trustee, the clerk shall not be required to transmit the paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted. The Committee Note has been changed to reflect the new paragraph.

Rule 5008. Funds of the Estate.

This rule has been abrogated entirely. The Committee Note originally published has been deleted and replaced with a new Committee Note that explains that the rule has been abrogated to be consistent with § 345(b) of the Bankruptcy Code and the role of the United States trustee in approving bonds and supervising trustees.

Rule 5009. Closing Cases.

The original publication of the preliminary draft contained amendments to Rule 5009 that would require a motion to close a case under chapter 7, 11, 12, or 13, that would provide for certification by the United States trustee that an estate has been fully administered, and that would provide for payment of the trustee's statutory fee prior to the closing of the case under certain situations. These proposed amendments have been deleted and Rule 5009 has been changed to provide that the case trustee may certify that the estate has been fully administered and, unless there is a timely objection filed, the certification shall create a presumption that enables the court to close the case without the need to review the final report and account. The Committee Note reflects these changes.

Rule 5010. Reopening Cases.

In most reopened cases a trustee is not needed because there are no assets to be administered. However, under the existing rule a trustee must be appointed in a reopened case unless the court orders otherwise. In the interest of judicial economy, Rule 5010 has been changed so that the need for a motion regarding the appointment of a trustee in a reopened case will be avoided unless the United States trustee or a party in interest seeks such appointment. If no motion for the appointment is filed, a trustee will not be appointed. The Committee Note has been changed to explain this change.

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004. Use, Sale, or Lease of Property.

Subdivision (f). Conduct of Sale Not in the Ordinary Course of Business. This subdivision was changed to clarify that the auctioneer has the duty of transmitting to the United States trustee the statement regarding the sale of property or, if the property was not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor has this duty.

**PART VII
ADVERSARY PROCEEDINGS**

Rule 7004. Process; Service of Summons, Complaint

Rule 7004 incorporates by reference some, but not all, of the existing subdivisions of Rule 4 F.R.Civ.P. It is expected that Rule 4 will be substantially amended and restructured, that the effective date of such amendments may be after the effective date of the amendments to the Bankruptcy Rules, and that Rule 7004 will have to be amended soon after the amendments to Rule 4 F.R.Civ.P. have been finally determined.

However, until the amendments to Rule 4 F.R.Civ.P. are finally approved and the Advisory Committee has an opportunity to consider the impact of such changes on Rule 7004, a new subdivision (g) has been added to Rule 7004 to provide that the subdivisions of Rule 4 F.R.Civ.P. made applicable by the Bankruptcy Rules shall be the subdivisions of 4 F.R.Civ.P. in effect on January 1, 1990. By adding this provision, any amendment to Rule 4 F.R.Civ.P. will not affect service in bankruptcy cases until further amendment to the Bankruptcy Rules. It is anticipated that the Advisory Committee will review and propose further amendments to Rule 7004, including abrogation of the new subdivision (g), soon after the adoption of the anticipated amendments to Rule 4 F.R.Civ.P.

The Committee Note has been changed to explain this change and to include the text of the applicable portions of 4 F.R.Civ.P. in effect on January 1, 1990.

Rule 7062. Stay of Proceedings to Enforce a Judgment.

The words "in contested matters" have been deleted from the end of the rule as unnecessary and because they may cause confusion since Part VII applies to adversary proceedings.

**PART VIII
APPEALS TO DISTRICT COURT OR
BANKRUPTCY APPELLATE PANEL**

Rule 8004. Service of the Notice of Appeal.

Rule 8004 has been changed to make it clear that failure to transmit a copy of the notice of appeal to the United States

trustee does not affect the validity of the appeal.

PART IX GENERAL PROVISIONS

Rule 9003. Prohibition of Ex Parte Contacts.

Subdivision (a). General Prohibition. This subdivision has been changed to extend to examiners the prohibition on ex parte meetings and communications with the court. The Committee Note explains the change.

Rule 9006. Time.

Subdivision (b). Enlargement. Paragraph (3) has been changed to limit the enlargement of time regarding motions to dismiss a case for substantial abuse of chapter 7 in accordance with Rule 1017(e).

Rule 9009. Forms

The Committee Note has been changed to refer to the proposed amendment to Rule 9029 which clarifies that local court rules may not prohibit or limit the use of the Official Forms.

Rule 9029. Local Bankruptcy Rules

This rule has been changed to clarify that local court rules may not prohibit or limit the use of the Official Forms. A Committee Note has been added to make it clear that the Official Forms must be accepted in every bankruptcy court.

Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure.

This rule has been changed to provide flexibility so that the Bankruptcy Rules may provide that subsequent amendments to a specific Federal Rule of Civil Procedure made applicable by the Bankruptcy Rules shall not be effective with regard to Bankruptcy Code cases or proceedings. For example, in view of the anticipated amendments to, and restructuring of, Rule 4 F.R.Civ.P., Rule 7004(g) will prevent such changes from affecting Bankruptcy Code cases until the Advisory Committee on Bankruptcy Rules has an opportunity to consider such amendments and to make appropriate recommendations for incorporating such amendments into the Bankruptcy Rules.

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

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LLOYD D GEORGE
BANKRUPTCY RULES

June 14, 1990

TO: Hon. Joseph F. Weis, Jr., Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Lloyd D. George, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Report of the Comments Received Subsequent to the
Publication of the Preliminary Draft of Proposed
Amendments to the Bankruptcy Rules

A preliminary draft of the proposed changes to the Bankruptcy Rules was circulated to members of the bench and bar in August 1989. Public hearings were held on January 18, 1990, in San Francisco, California, on February 1, 1990, in Washington, D.C., and on February 15, 1990, in Dallas, Texas.

A list of the names and addresses of the respondents who submitted letters and/or who testified at a public hearing is attached. Following the list is a rule-by-rule summary of the comments received and the Advisory Committee action with regard to each comment.

Many comments received were unrelated to proposed amendments, but are worthy of future consideration by the Advisory Committee. For example, several commentators suggested changes to modify time periods for the purpose of expediting chapter 13 cases. These suggested changes should be studied by the Advisory Committee and, if adopted, would necessitate further publication for comment by the bench and bar. Therefore, the Advisory Committee decided to reject and revisit many of the suggestions received. The Advisory Committee intends to begin revisiting these matters in the Fall of 1990.