

verses and probable failure.” *In re Wood & Henderson*, 210 U.S. 246, 253 (1908). This rule, like §60d of the Act and §329 of the Code, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a debtor and his attorney to protect the creditors of the estate and the debtor against overreaching by an officer of the court who is in a peculiarly advantageous position to impose on both the creditors and his client. 2 Collier, *Bankruptcy* ¶329.02 (15th ed. 1980); MacLachlan, *Bankruptcy* 318 (1956). Rule 9014 applies to any contested matter arising under this rule.

This rule is not to be construed to permit post-petition payments or transfers which may be avoided under other provisions of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to include within subdivision (a) a payment or transfer of property by the debtor to an attorney after the filing of an involuntary petition but before the order for relief. Any party in interest should be able to make a motion for a determination of whether such payment or transfer is excessive because the funds or property transferred may be property of the estate.

The United States trustee supervises and monitors the administration of bankruptcy cases other than chapter 9 cases and pursuant to §307 of the Code may raise, appear and be heard on issues relating to fees paid to the debtor’s attorney. It is consistent with that role to expect the United States trustee to review statements filed under Rule 2016(b) and to file motions relating to excessive fees pursuant to §329 of the Code.

Rule 2018. Intervention; Right to Be Heard

(a) PERMISSIVE INTERVENTION. In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

(b) INTERVENTION BY ATTORNEY GENERAL OF A STATE. In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) CHAPTER 9 MUNICIPALITY CASE. The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.

(d) LABOR UNIONS. In a chapter 9, 11, or 12 case, a labor union or employees’ association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees. A labor union or employees’ association which exercises its right to be heard under this subdivision shall not be entitled to appeal any judgment, order, or decree relating to the plan, unless otherwise permitted by law.

(e) SERVICE ON ENTITIES COVERED BY THIS RULE. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Rules 8-210, 9-15 and 10-210 and it implements §§1109 and 1164 of the Code.

Pursuant to §1109 of the Code, parties in interest have a right to be heard and the Securities and Exchange Commission may raise and be heard on any issue but it may not take an appeal. That section is applicable in chapter 9 cases (§901 of the Code) and in chapter 11 cases, including cases under subchapter IV thereof for the reorganization of a railroad.

In a railroad reorganization case under subchapter IV of chapter 11, §1164 also gives the right to be heard to the Interstate Commerce Commission, the Department of Transportation and any state or local regulatory commission with jurisdiction over the debtor, but these entities may not appeal.

This rule does not apply in adversary proceedings. For intervention in adversary proceedings, see Rule 7024. The rules do not provide any right of compensation to or reimbursement of expenses for intervenors or others covered by this rule. Section 503(b)(3)(D) and (4) is not applicable to the entities covered by this rule.

Subdivision (a) is derived from former Chapter VIII Rule 8-210 and former Chapter X Rule 10-210. It permits intervention of an entity (see §101(14), (21) of the Code) not otherwise entitled to do so under the Code or this rule. Such a party seeking to intervene must show cause therefor.

Subdivision (b) specifically grants the appropriate state’s Attorney General the right to appear and be heard on behalf of consumer creditors when it is in the public interest. See House Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 189. While “consumer creditor” is not defined in the Code or elsewhere, it would include the type of individual entitled to priority under §507(a)(5) of the Code, that is, an individual who has deposited money for the purchase, lease or rental of property or the purchase of services for the personal, family, or household use of the individual. It would also include individuals who purchased or leased property for such purposes in connection with which there may exist claims for breach of warranty.

This subdivision does not grant the Attorney General the status of party in interest. In other contexts, the Attorney General will, of course, be a party in interest as for example, in representing a state in connection with a tax claim.

Subdivision (c) recognizes the possible interests of the Secretary of the Treasury or of the state of the debtor’s locale when a municipality is the debtor. It is derived from former Chapter IX Rule 9-15 and §85(d) of the Act.

Subdivision (d) is derived from former Chapter X Rule 10-210 which, in turn, was derived from §206 of the Act. Section 206 has no counterpart in the Code.

Subdivision (e) is derived from former Chapter VIII Rule 8-210(d). It gives the court flexibility in directing the type of future notices to be given intervenors.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Subdivision (d) is amended to make it clear that the prohibition against appeals by labor unions is limited only to their participation in connection with the hearings on the plan as provided in subdivision (d). If a labor union would otherwise have the right to file an appeal or to be a party to an appeal, this rule does not preclude the labor union from exercising that right.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivisions (b) and (d) are amended to include chapter 12.

Rule 2019. Disclosure Regarding Creditors and Equity Security Holders in Chapter 9 and Chapter 11 Cases

(a) DEFINITIONS. In this rule the following terms have the meanings indicated:

(1) “Disclosable economic interest” means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.

(2) “Represent” or “represents” means to take a position before the court or to solicit votes regarding the confirmation of a plan on behalf of another.

(b) DISCLOSURE BY GROUPS, COMMITTEES, AND ENTITIES.

(1) In a chapter 9 or 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.

(2) Unless the court orders otherwise, an entity is not required to file the verified statement described in paragraph (1) of this subdivision solely because of its status as:

- (A) an indenture trustee;
- (B) an agent for one or more other entities under an agreement for the extension of credit;
- (C) a class action representative; or
- (D) a governmental unit that is not a person.

(c) INFORMATION REQUIRED. The verified statement shall include:

(1) the pertinent facts and circumstances concerning:

(A) with respect to a group or committee, other than a committee appointed under §1102 or §1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or

(B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged;

(2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:

- (A) name and address;
- (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and
- (C) with respect to each member of a group or committee that claims to represent any entity in addition to the members of the group or committee, other than a committee appointed under §1102 or §1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed;

(3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity

security holder represented by an entity, group, or committee, other than a committee appointed under §1102 or §1114 of the Code:

(A) name and address; and

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and

(4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.

(d) SUPPLEMENTAL STATEMENTS. If any fact disclosed in its most recently filed statement has changed materially, an entity, group, or committee shall file a verified supplemental statement whenever it takes a position before the court or solicits votes on the confirmation of a plan. The supplemental statement shall set forth the material changes in the facts required by subdivision (c) to be disclosed.

(e) DETERMINATION OF FAILURE TO COMPLY; SANCTIONS.

(1) On motion of any party in interest, or on its own motion, the court may determine whether there has been a failure to comply with any provision of this rule.

(2) If the court finds such a failure to comply, it may:

(A) refuse to permit the entity, group, or committee to be heard or to intervene in the case;

(B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or

(C) grant other appropriate relief.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is a comprehensive regulation of representation in chapter 9 municipality and in chapter 11 reorganization cases. It is derived from §§209–213 of the Act and former Chapter X Rule 10–211.

Subdivision (b) is derived from §§212, 213 of the Act. As used in clause (2), “other authorization” would include a power or warrant of attorney which are specifically mentioned in §212 of the Act. This rule deals with representation provisions in mortgages, trust deeds, etc. to protect the beneficiaries from unfair practices and the like. It does not deal with the validation or invalidation of security interests generally. If immediate compliance is not possible, the court may permit a representative to be heard on a specific matter, but there is no implicit waiver of compliance on a permanent basis.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (a) is amended to exclude from the requirements of this rule committees of retired employees appointed pursuant to §1114 of the Code. The words “with the clerk” are deleted as unnecessary. See Rules 5005(a) and 9001(3).

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The rule is substantially amended to expand the scope of its coverage and the content of its disclosure requirements. Stylistic and organizational changes are also made in order to provide greater clarity. Because the rule no longer applies only to representatives of creditors and equity security holders, the title of the

rule has been changed to reflect its broadened focus on disclosure of financial information in chapter 9 and chapter 11 cases.

Subdivision (a). The content of subdivision (a) is new. It sets forth two definitions. The first is the definition of the term “disclosable economic interest,” which is used in subdivisions (c)(2) and (c)(3). The definition of the term is intended to be sufficiently broad to cover any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 9 or chapter 11 case. A disclosable economic interest extends beyond claims and interests owned by a stakeholder and includes, among other types of holdings, short positions, credit default swaps, and total return swaps.

The second definition is of “represent” or “represents.” The definition provides that representation requires active participation in the case or in a proceeding on behalf of another entity—either by taking a position on a matter before the court or by soliciting votes on the confirmation of a plan. Thus, for example, an attorney who is retained and consulted by a creditor or equity security holder to monitor the case, but who does not advocate any position before the court or engage in solicitation activities on behalf of that client, does not represent the creditor or equity security holder for purposes of this rule.

Subdivision (b). Subdivision (b)(1) specifies who is covered by the rule’s disclosure requirements. In addition to an entity, group, or committee that *represents* more than one creditor or equity security holder, the amendment extends the rule’s coverage to groups or committees that *consist* of more than one creditor or equity security holder. The rule no longer excludes official committees, except as specifically indicated. The rule applies to a group of creditors or equity security holders that act in concert to advance common interests (except when the group consists exclusively of affiliates or insiders of one another), even if the group does not call itself a committee.

Subdivision (b)(2) excludes certain entities from the rule’s coverage. Even though these entities may represent multiple creditors or equity security holders, they do so under formal legal arrangements of trust or contract law that preclude them from acting on the basis of conflicting economic interests. For example, an indenture trustee’s responsibilities are defined by the indenture, and individual interests of bondholders would not affect the trustee’s representation.

Subdivision (c). Subdivision (c) sets forth the information that must be included in a verified statement required to be filed under this rule. Subdivision (c)(1) continues to require disclosure concerning the formation of a committee or group, other than an official committee, and the employment of an entity.

Subdivision (c)(2) specifies information that must be disclosed with respect to the entity and each member of the committee and group filing the statement. In the case of a committee or group, the information about the nature and amount of a disclosable economic interest must be specifically provided on a member-by-member basis, and not in the aggregate. The quarter and year in which each disclosable economic interest was acquired by each member of a committee or group (other than an official committee) that claims to represent others must also be specifically provided, except for a disclosable economic interest acquired more than a year before the filing of the petition. Although the rule no longer requires the disclosure of the precise date of acquisition or the amount paid for disclosable economic interests, nothing in this rule precludes either the discovery of that information or its disclosure when ordered by the court pursuant to authority outside this rule.

Subdivision (c)(3) specifies information that must be disclosed with respect to creditors or equity security holders that are represented by an entity, group, or committee. This provision does not apply with respect to those represented by official committees. The information required to be disclosed under subdivision (c)(3)

parallels that required to be disclosed under subdivision (c)(2)(A) and (B). The amendment also clarifies that under (c)(3) the nature and amount of each disclosable economic interest of represented creditors and shareholders must be stated as of the date of the verified statement.

Subdivision (c)(4) requires the attachment of any instrument authorizing the filer of the verified statement to act on behalf of creditors or equity security holders.

Subdivision (d). Subdivision (d) requires the filing of a supplemental statement at the time an entity, group, or committee takes a position before the court or solicits votes on a plan if there has been a material change in any of the information contained in its last filed statement. The supplemental verified statement must set forth the material changes that have occurred regarding the information required to be disclosed by subdivision (c) of this rule.

Subdivision (e). Subdivision (e) addresses the court’s authority to determine whether there has been a violation of this rule and to impose a sanction for any violation. It no longer addresses the court’s authority to determine violations of other applicable laws regulating the activities and personnel of an entity, group, or committee.

Changes Made After Publication.

Subdivision (a). A definition of “represent” or “represents” was added, and the subdivision was divided into paragraphs (1) and (2).

Subdivision (b). The provision authorizing the court to require disclosure by an entity that seeks or opposes the granting of relief was deleted.

In the paragraph now designated as (1), language was added providing that groups, committees, and entities are covered by the rule only if they consist of or represent multiple creditors or equity security holders “that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.” The phrase “and, unless the court directs otherwise, every indenture trustee,” was deleted.

Subdivision (b)(2) was added to specify entities that are not required to file a verified statement merely because they act in one of the designated capacities.

Subdivision (c). The authorization in subdivision (c)(2)(B) and (c)(3)(B) for the court to require the disclosure of the amount paid for a disclosable economic interest was deleted.

The requirement in subdivision (c)(2)(C) and (c)(3)(C) for disclosure of the acquisition date of each disclosable economic interest was modified. The requirement was made applicable only to members of an unofficial group or committee that claims to represent any entity in addition to the members of the group or committee, and the date that must be disclosed was limited to the quarter and year of acquisition.

Subdivision (d). The requirement of monthly supplementation of a verified statement was modified to require supplementation whenever a covered group, committee, or entity takes a position before the court or solicits votes on the confirmation of a plan and there has been a material change in any fact disclosed in its most recently filed statement.

Subdivision (e). The provisions published as subdivision (e)(1)(B) and (C), which authorized the court to determine failures to comply with legal requirements other than those imposed by Rule 2019, were deleted.

Subdivision (e)(2), which enumerated the materials the court could examine in making a determination of noncompliance, was deleted.

Committee Note. In the discussion of the definition of “disclosable economic interest,” the specific examples of “short positions, credit default swaps, and total return swaps” were added to illustrate the breadth of the definition. A sentence was added to the discussion of subdivision (c)(2) that states that the rule does not affect the right of a party to obtain information by means of discovery or as ordered by the court under any authority outside the rule.

Other changes. Stylistic and organizational changes were made throughout the rule and Committee Note to

reduce the length and clarify the meaning of the published proposal.

Rule 2020. Review of Acts by United States Trustee

A proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014.

(Added Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1991

The United States trustee performs administrative functions, such as the convening of the meeting of creditors and the appointment of trustees and committees. Most of the acts of the United States trustee are not controversial and will go unchallenged. However, the United States trustee is not a judicial officer and does not resolve disputes regarding the propriety of its own actions. This rule, which is new, provides a procedure for judicial review of the United States trustee's acts or failure to act in connection with the administration of the case. For example, if the United States trustee schedules a §341 meeting to be held 90 days after the petition is filed, and a party in interest wishes to challenge the propriety of that act in view of §341(a) of the Code and Rule 2003 which requires that the meeting be held not more than 40 days after the order for relief, this rule permits the party to do so by motion.

This rule provides for review of acts already committed by the United States trustee, but does not provide for advisory opinions in advance of the act. This rule is not intended to limit the discretion of the United States trustee, provided that the United States trustee's act is authorized by, and in compliance with, the Code, title 28, these rules, and other applicable law.

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

Rule 3001. Proof of Claim

(a) **FORM AND CONTENT.** A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) **WHO MAY EXECUTE.** A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) **SUPPORTING INFORMATION.**

(1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

(3) *Claim Based on an Open-End or Revolving Consumer Credit Agreement.*

(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;

(iii) the date of an account holder's last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

(d) **EVIDENCE OF PERFECTION OF SECURITY INTEREST.** If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) **TRANSFERRED CLAIM.**

(1) *Transfer of Claim Other Than for Security Before Proof Filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) *Transfer of Claim Other than for Security after Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify