

by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.

(c) ADMISSIBILITY OF RECORD IN EVIDENCE. A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

(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 supplements 28 U.S.C. §773. A record of proceedings before the bankruptcy judge is to be made whenever practicable. By whatever means the record is made, subdivision (a) requires that the preparer of the record certify and file the original notes, tape recording, or other form of sound recording of the proceedings. Similarly, if a transcript is requested, the preparer is to file a certified copy with the clerk.

Subdivision (b) is derived from 28 U.S.C. §753(f).

Subdivision (c) is derived from former Bankruptcy Rule 511(c). This subdivision extends to a sound recording the same evidentiary status as a transcript under 28 U.S.C. §773(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The words “with the clerk” in the final sentence of subdivision (a) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

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

If a presumption of abuse has arisen under §707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1991

This rule [Rule 5008. Funds of the Estate; abrogated Apr. 30, 1991, eff. Aug. 1, 1991] is abrogated in view of the amendments to §345(b) of the Code and the role of the United States trustee in approving bonds and supervising trustees.

COMMITTEE NOTES ON RULES—2008

This rule is new. The 2005 amendments to §342 of the 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, the rule requires that the clerk send a second notice.

Changes Made After Publication. No changes were made after publication.

Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer’s Debt Adjustment, Chapter 13 Individual’s Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases

(a) CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case has not filed the statement required by Rule 1007(b)(7) within 45 days after the first date set for the meeting of creditors under §341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the statement is filed within the applicable time limit under Rule 1007(c).

(c) CASES UNDER CHAPTER 15. A foreign representative in a proceeding recognized under §1517 of the Code shall file a final report when the purpose of the representative’s appearance in the court is completed. The report shall describe the nature and results of the representative’s activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 28, 2010, eff. Dec. 1, 2010.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is the same as §350(a) of the Code. An estate may be closed even though the period allowed by Rule 3002(c) for filing claims has not expired. The closing of a case may be expedited when a notice of no dividends is given under Rule 2002(e). Dismissal of a case for want of prosecution or failure to pay filing fees is governed by Rule 1017.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The final report and account of the trustee is required to be filed with the court and the United States trustee under §§704(9), 1202(b)(1), and 1302(b)(1) of the Code. This amendment facilitates the United States trustee’s performance of statutory duties to supervise trustees and administer cases under chapters 7, 12, and 13 pursuant to 28 U.S.C. §586. In the absence of a timely objection by the United States trustee or a party in interest, the court may discharge the trustee and close the case pursuant to §350(a) without the need to review the final report and account or to determine the merits of the trustee’s certification that the estate has been fully administered.