

**UNITED STATES DISTRICT AND BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO**

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Cameron S. Burke
Court Executive/Clerk of Court

November 29, 1999

MEMORANDUM

TO: Members of the Bar and Public

FROM: Cameron Burke, Court Executive

SUBJECT: Federal Rules Changes effective December 1, 1999

A summary of the amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Bankruptcy Procedure are shown below. These amendments take effect on **December 1, 1999.**

Please note that these summaries are taken from the Committee notes and are not intended as legal advice. You are advised to refer to the complete text of the Rule changes.

Thanks for your consideration.

UNITED STATES DISTRICT AND BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE
WHICH TAKE EFFECT DECEMBER 1, 1999*

Rule 6 - The Grand Jury

Subdivision 6(d) The amendment is intended to permit interpreters to assist persons who are speech or hearing impaired and are serving on a grand jury.

Subdivision 6(f) The amendment is intended to avoid the problems associated with bringing the entire jury to the court for the purpose of returning an indictment. This amendment allows the foreperson or deputy foreperson, acting on behalf of the grand jurors to return the indictment.

Rule 11 - Pleas

Subdivision (c)(6) This has been amended specifically to reflect the increasing practice of including provisions in plea agreements which require the defendant to waive certain appellate rights.

Subdivision (e) Amendments have been made to this Rule to reflect the impact of the Sentencing Guidelines on guilty pleas. The subdivisions have been amended to recognize that a plea agreement may specifically address not only what amounts to an appropriate sentence, but also a sentencing guideline, a sentencing factor, or a policy statement accompanying a sentencing guideline or factor. The amendment makes it clear that this type of agreement is not binding on the court.

Rule 24 - Trial Jurors

Rule 23(b) provides that in some circumstances a verdict may be returned by eleven jurors. Rule 24 (c)(3) allows the Court discretion to retain alternates when the jury retires, insulate them from the deliberation process, and have them available should one or more vacancies occur in the jury. If an alternate replaces a juror after deliberations have begun, the Court shall instruct the jury to begin its deliberations anew.

**Summarized from the National Committee notes published by the
Advisory Committee on Criminal Rules*

UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF IDAHO

SUBSTANTIVE AMENDMENTS TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE EFFECTIVE DECEMBER 1, 1999*

Rule 1017 - Dismissal or Conversion of Case; Suspension

New subdivision (c) was added to provide that the United States Trustee, who is the only entity with the standing to file a motion to dismiss under § 707(a)(3) or § 1307(c)(9), is required to serve the motion on only the debtor, trustee, and any other entities as the court directs. This amendment, and the amendment to Rule 2002, will have the effect of avoiding the expense of sending notices of the motion to all creditors in a chapter 7 case.

New subdivision (f) is the same as current subdivision (d), except that it provides that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 under § 707(b) is governed by Rule 9014.

Rule 1019 - Conversion of a Chapter 11, 12, 13 to Chapter 7

Paragraph (1)(B) is amended to clarify that a motion for an extension of time to file a statement of intention must be made by written motion filed before the time expires, or by oral request made at a hearing before the time expires.

Subdivision (6) is amended to provide that a holder of an administrative expense claim incurred after the commencement of the case, but before conversion to chapter 7, is required to file a request for payment under § 503(a) within a time fixed by the court, rather than a proof of claim under § 501 and Rules 3001(a)-(d) and 3002. It is unnecessary for the court to fix a time for filing requests for payment if it appears that there are not sufficient assets to pay preconversion administrative expenses. If a time for filing a request for payment of an administrative expense is fixed by the court, it may be enlarged as provided in Rule 9006(b).

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

Paragraph (a)(4) is amended to conform to the amendments to Rule 1017.

Paragraph (f)(2) is amended to provide for notice of the suspension of proceedings under § 305.

Rule 2003 - Meeting of Creditors or Equity Security Holders

Subdivision (d) is amended to require the United States Trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

Rule 3020 - Deposit; Confirmation of Plan in Chapter 9 or Chapter 11

Subdivision (e) is added to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under chapter 9 or chapter 11 of the Code before the plan is implemented and an appeal becomes moot. Unless the court orders otherwise, any transfer of assets, issuance of securities, and cash distributions provided for in the plan may not be made before the expiration of the 10-day period. The stay of the confirmation order under subdivision (e) does not affect the time for filing a notice of appeal from the confirmation order in accordance with Rule 8002.

The court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately. Alternatively, the court may order that the stay under Rule 3020(e) is for a fixed period of less than 10 days.

Rule 3021 - Distribution Under Plan

This amendment is to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case.

Rule 4001 - Relief from Automatic Stay

Paragraph (a)(3) is added to provide sufficient time for a party to request a stay pending appeal of an order granting relief from an automatic stay before the order is enforced or implemented. The stay under paragraph (a)(3) is not applicable to orders granted ex parte in accordance with Rule 4001(a)(2).

The stay of the order does not affect the time for filing a notice of appeal in accordance with Rule 8002. While the enforcement and implementation of an order granting relief from the automatic stay is temporarily stayed under paragraph (a)(3), the automatic stay continues to protect the debtor, and the moving party may not foreclose on collateral or take other steps that would violate the automatic stay.

The court may, in its discretion, order that Rule 4001(a)(3) is not applicable so that the prevailing party may immediately enforce and implement the order granting relief from

the automatic stay. Alternatively, the court may order that the stay under Rule 4001(a)(3) is for a fixed period less than 10 days.

Rule 4004 - Grant or Denial of Discharge

Subdivision (a) is amended to clarify that, in a chapter 7 case, the deadline for filing a complaint objecting to discharge under § 727(a) is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint objecting to discharge in accordance with Rule 4004(b).

Subdivision (b) as amended, requires that a motion for extension of time for filing a complaint objecting to discharge be filed before the time has expired.

Rule 4007 - Determination of Dischargeability of a Debt

Subdivision (c) is amended to clarify that the deadline for filing a complaint to determine the dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint to determine the dischargeability of a debt in accordance with this rule.

As amended, subdivisions (c) and (d) require that a motion for an extension of time be filed before the time has expired.

Rule 6004 - Use, Sale or Lease of Property

Subdivision (g) is added to provide sufficient time for a party to request a stay pending appeal of an order authorizing the use, sale, or lease of property under § 363(b) of the Code before the order is implemented. It does not affect the time for filing a notice of appeal in accordance with Rule 8002.

Rule 6004(g) does not apply to orders regarding the use of cash collateral and does not affect the trustee's right to use, sell, or lease property without a court order to the extent permitted under § 363 of the Code.

The court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used, sold, or leased immediately, in accordance with the order entered

by the court. Alternatively, the court may order that the stay under Rule 6004(g) is for a fixed period less than 10 days.

Rule 6006 - Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease

Subdivision (d) is added to provide sufficient time for a party to request a stay pending appeal of an order authorizing the assignment of an executory contract or unexpired lease under § 365(f) of the Code before the assignment is consummated. The stay under subdivision (d) does not affect the time for filing a notice of appeal in accordance with Rule 8002.

The court may, in its discretion, order that Rule 6006(d) is not applicable so that the executory contract or unexpired lease may be assigned immediately in accordance with the order entered by the court. Alternatively, the court may order that the stay under Rule 6006(d) is for a fixed period less than 10 days.

Rule 7001 - Scope of Rules of Part VII

This rule is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief that is provided for in a plan under circumstances in which substantive law permits the relief.

Rule 7004 - Process; Service of Summons, Complaint

Subdivision (e) is amended so that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

Rule 7062 - Stay of Proceedings to Enforce a Judgment

The additional exceptions to Rule 62(a) consist of orders that are issued in contested matters. These exceptions are deleted from this rule because of the amendment to Rule 9014 that renders this rule inapplicable in contested matters unless the court orders otherwise.

Rule 9006 - Time

Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

Rule 9014 - Contested Matters

This rule is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter.

Rule 7062 provides that Rule 62 F.R.Civ.P., which governs stays of proceedings to enforce

a judgment, is applicable in adversary proceedings. The provisions of Rule 62, including the ten-day automatic stay of enforcement of a judgment provided by Rule 62(a) and the stay as a matter of right by posting a supersedeas bond provided in Rule 62(d), are not appropriate for most orders granting or denying motions governed by Rule 9014.

Although Rule 7062 will not apply automatically in contested matters, the amended rule permits the court, in its discretion, to order that Rule 7062 apply in a particular matter, and Rule 8005 gives the court discretion to issue a stay or any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. In addition, amendments to Rules 3020, 3021, 4001, 6004 and 6006 automatically stay certain types of orders for a period of ten days, unless the court orders otherwise.

**These have been summarized from the National Committee Notes published
by the Advisory Committee on Bankruptcy Rules*