



Federal Magistrates Court (Bankruptcy) Amendment Rules 2011 (No. 1)¹

Select Legislative Instrument 2011 No. 285

We, Federal Magistrates, make the following Rules of Court under the *Federal Magistrates Act 1999*.

Dated 13 December 2011

PASCOE CFM
ALTOBELLI FM
BAKER FM
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Federal Magistrates

Richard Foster
Chief Executive Officer

1 Name of Rules

These Rules are the *Federal Magistrates Court (Bankruptcy) Amendment Rules 2011 (No. 1)*.

2 Commencement

These Rules commence on 1 January 2012.

3 Amendment of *Federal Magistrates Court (Bankruptcy) Rules 2006*

Schedule 1 amends the *Federal Magistrates Court (Bankruptcy) Rules 2006*.

Schedule 1 Amendments

(rule 3)

[1] Subrule 1.04 (1), definition of *Federal Court Rules*

omit

[2] Rule 1.05, note

omit

- District

[3] Rules 4.08 and 4.09

substitute

4.08 Notification and entry of sequestration order

- (1) A sequestration order must be in accordance with Form 7.

- (2) If the Court makes a sequestration order against the estate of a debtor, the applicant creditor must:
 - (a) on the same day as the order is made, notify the trustee, in writing, of his or her appointment; and
 - (b) within 2 days after the order is made, give a copy of the sequestration order to any person who has consented to act as a trustee.
- (3) If the order is not entered at the time the order is made, the applicant creditor must, as soon as practicable, request entry of the order in accordance with rule 16.08 of the *Federal Magistrates Court Rules 2001*.

Note Subsection 52 (1A) of the Bankruptcy Act provides that the creditor who obtained the sequestration order must give a copy of the order to the Official Receiver before the end of the period of 2 days beginning on the day the order was made.

4.09 Entry of order for dismissal etc of creditor's petition

- (1) This rule applies if the Court makes an order:
 - (a) dismissing a creditor's petition; or
 - (b) granting leave for a creditor's petition to be withdrawn; or
 - (c) under subsection 52 (5) of the Bankruptcy Act.
- (2) The applicant creditor must:
 - (a) if the order is not entered at the time the order is made — request entry of the order in accordance with rule 16.08 of the *Federal Magistrates Court Rules 2001* as soon as practicable; and
 - (b) within 2 days after the order is made, give a copy of the order to the Official Receiver.

[4] Paragraph 7.05 (b)

omit

for the District in which the order was made

[5] Paragraph 8.02 (3) (b)

omit

for the District in which the order was made

[6] Paragraph 9.03 (b)

omit

Trustee, the Official Receiver for the District in which the application is made

insert

Trustee — the Official Receiver

[7] Paragraph 9.05 (b)

omit

for the District in which the order was made

[8] Paragraph 10.03 (c)

omit

for the District in which the application is made

[9] Rule 10.05

substitute

10.05 Entry of order

If:

(a) the Court makes an order under this Part; and

(b) the order is not entered at the time the order is made;

the applicant must, as soon as practicable, request entry of the order in accordance with rule 16.08 of the *Federal Magistrates Court Rules 2001*.

[10] Rule 11.04

substitute

11.04 Entry of order

If:

(a) the Court makes an order under this Part; and

(b) the order is not entered at the time the order is made;

the applicant must, as soon as practicable, request entry of the order in accordance with rule 16.08 of the *Federal Magistrates Court Rules 2001*.

Note Subsection 247 (3) of the Bankruptcy Act provides that the person administering the estate of the deceased person must, before the end of the period of 2 days beginning on the day the order was made, give a copy of the order to the Official Receiver.

[11] Subrule 13.01 (1)

omit

Order 62 of the Federal Court Rules

insert

Part 40 of the *Federal Court Rules 2011*

[12] Subrule 13.01 (3)

omit

Order 62 of the Federal Court Rules

insert

Part 40 of the *Federal Court Rules 2011*

[13] Subrule 13.03 (1)

omit

item 43B of Schedule 2 to the Federal Court Rules.

insert

item 14.1 of Schedule 3 to the *Federal Court Rules 2011*.

[14] Subrule 13.03 (2)

omit

item 43C of Schedule 2 to the Federal Court Rules.

insert

item 14.2 of Schedule 3 to the *Federal Court Rules 2011*.

[15] Paragraph 13.03 (3) (a)

omit

item 36 or 37 of Schedule 2 to the Federal Court Rules;

insert

item 1 of Schedule 3 to the *Federal Court Rules 2011*;

[16] Subrule 13.03 (4)

omit

Order 62 of the Federal Court Rules

insert

Part 40 of the *Federal Court Rules 2011*

[17] Schedule 1, Form 1

substitute

Form 1 Document Title

(subrule 1.06 (3))

No. of 20

IN THE: *[name of Court]*

District Registry: *[State]*

Division: General

IN THE MATTER OF: *[Name of debtor or bankrupt estate]*

[Name of Applicant(s)]

Applicant[s]

[Name of Respondent(s)]

Respondent[s]

Filed on behalf of (name and role of party) _____

Prepared by (name of person/lawyer) _____

Law firm (if applicable) _____

Tel _____ Fax _____

Email _____

Address for service

(include State and postcode) _____

[18] Schedule 1, Form 2

omit

Filed by the applicant

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

insert

Filed on behalf of (name and role of party) _____

Prepared by (name of person/lawyer) _____

Law firm (if applicable) _____

Tel _____ Fax _____

Email _____

Address for service

(include State and postcode) _____

[19] Schedule 1, Forms 3 to 15*omit***Filed by**

Name:

Address for service:

Telephone:

Fax number:

E-mail address:

insert

Filed on behalf of (name and role of party) _____

Prepared by (name of person/lawyer) _____

Law firm (if applicable) _____

Tel _____

Fax _____

Email _____

Address for service

(include State and postcode) _____

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.