

Form 5. INVOLUNTARY PETITION

COMMITTEE NOTE (1991)

This form has been redesigned in a box format similar to that of Form 1. See Advisory Committee Note to Form 1.

The allegations required under § 303 are grouped together, and a separate section has been provided for additional allegations based upon the prohibitions and requirements set forth in Rule 1003(a) concerning transfer of claims by petitioning creditors. Petitioners may wish to supplement the allegations set forth in the form with a further statement of facts. Additional information concerning any allegation can be requested by the debtor as part of the discovery process.

Each petitioning creditor, by signing on the line provided, signs both the petition and the unsworn declaration which 28 U.S.C. § 1746 permits instead of verification. The addresses as well as the names of individuals signing the petition in a representative capacity are required, together with disclosure of which petitioner is represented by each signatory.

This form is intended to be used in every involuntary case, including that of a partnership. The separate form for a petition by a partner has been abrogated. Pursuant to § 303(b)(3)(A) of the Code, a petition by fewer than all of the general partners seeking an order for relief with respect to the partnership is treated as an involuntary petition. Such a petition is adversarial in character because not all of the partners are joining in the petition.

Section 303(b)(3)(B) permits a petition against the partnership if relief has been ordered under the Code with respect to all of the general partners. In that event, the petition may be filed by a general partner, a trustee of a general partner's estate, or a creditor of the partnership. This form may be adapted for use in that type of case.

28 U.S.C. § 1408(1) specifies the proper venue alternatives for all persons, including partnerships, as domicile, residence, principal place of business, or location of principal assets. Venue also may be based on a pending case commenced by an affiliate, general partner, or partnership pursuant to 28 U.S.C. § 1408(2). Both options are set forth in the block labeled "Venue."

28 U.S.C. § 1746 permits the unsworn declaration instead of a verification. See Committee Note to Form 2.

1992 COMMITTEE NOTE

The form has been amended to require the dating of signatures.