News from the Bankruptcy Rules Advisory Committee

December 1, 2012 Rules and Forms Changes

Rules Amendments

Proposed amendments to Bankruptcy Rules 1007, 2015, 3001, 7054, and 7056 have been approved by the Judicial Conference and the Supreme Court, and, unless Congress acts to the contrary, will become effective December 1, 2012.

The amendments to Rules 1007 and 2015 are technical. The amendments conform Rule 1007(c) to the amendment to Rule 1007(a)(2) in 2011 and Rule 2015 to the renumbering of section 704(a)(8) of the Bankruptcy Code in 2005.

New Rule 3001(c)(3) would provide additional information on claims based on an open-end or revolving consumer credit agreement, such as claims for credit card debts. The creditor would be required to file a statement that provides the name of the entity from whom the creditor purchased the account; the name of the entity to whom the debt was owed at the time of the account holder's last transaction; the date of the account holder's last transaction; the date of the last payment on the account; and the charge-off date.

As amended, Rule 7054 would increase the time for a party to respond to the prevailing party's bill of costs in an adversary proceeding from 1 day to 14 days, and extend the time for seeking court review of the costs taxed by the clerk from 5 days to 7 days.

The proposed amendment to Rule 7056 would set a new default deadline for filing a summary judgment motion. The current rule incorporates Civil Rule 56, which sets the default deadline at 30 days after the close of discovery. Because hearings in bankruptcy cases sometimes occur shortly after the close of discovery, the new default deadline would be 30 days before the initial date set for an evidentiary hearing.

Word and PDF documents showing the amendments incorporated into clean versions of the rules can be found on the judiciary's public website at the following link under the heading "Amendments Adopted by the Supreme Court – Pending Congressional Review".
http://www.uscourts.gov/RulesAndPolicies/rules/pending-rules.aspx.
Redline versions are available on the same webpage at the link to the "Excerpt from the Report of the Advisory Committee on Bankruptcy Rules."

In addition, Interim Bankruptcy Rule 1007-I will be amended effective December 1 to

conform to the proposed deletion of the reference to Rule 1007(a)(2) in Rule 1007(c). The courts will be asked to adopt the amended Interim Rule as a local rule, as was done with the original version of Interim Rule 1007-I in 2008 and an earlier amendment in 2011. The Interim Rule implements the temporary exclusion from the bankruptcy means test provided in the National Guard and Reservists Debt Relief Act of 2008, Public Law No. 110-438, as amended, for certain Reservists and members of the National Guard.

Forms Amendments

At its September 2012 meeting, the Judicial Conference approved a recommendation from the Committee on Rules of Practice and Procedure to amend Official Forms 7, 9A - 9I, 10, and 21. They will become effective December 1, 2012.

The amendment to Official Form 7 makes the form's definition of an insider consistent with the definition in the Bankruptcy Code.

Official Form 10 is amended to eliminate a reference to filing a power of attorney and to include statements about the attachment of required documentation for certain types of claims. In the case of claims secured by the debtor's principal residence, the form states that the Mortgage Proof of Claim Attachment is being filed with the claim. For claims based on an open-end or revolving consumer credit agreement, the form states that the information required by new Rule 3001(c)(3)(A), which also is scheduled to take effect on December 1, is attached.

The Judicial Conference also approved the Committee's proposals to add privacy warnings to Bankruptcy Official Form 9, the meeting of creditors notices, and Official Form 21, the debtor's Statement of Social Security Number.

The December 1, 2012 forms are posted on the judiciary's pending forms page at: http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx.

November 21, 2012 Forms Changes

Director's Procedural Forms 200 (Required Lists, Schedules, Statements and Fees) and 201A (Notice to Individual Consumer Debtor) will be amended effective November 21, 2012. The forms will be amended to conform to the $167 increase in the chapter 11 filing fee provided in the Temporary Bankruptcy Judgeships Extension Act of 2012, Public Law No. 112-121.

The amended forms are posted on the judiciary's pending forms page.

Rules and Forms Published for Public Comment

At its June 2012 meeting, the Standing Rules Committee approved the Advisory Committee's request for rules and forms amendments to be published for public comment beginning in mid-August, 2012.

If, after the comment period, the proposed rule amendments are approved by the Advisory Committee, the Standing Committee, the Judicial Conference, and the Supreme Court, and if Congress does not act to the contrary, they would take effect on December 1, 2014. Because the proposed form amendments are not considered by the Supreme Court or Congress, they are scheduled to go into effect December 1, 2013, if they are approved by the Advisory Committee, the Standing Committee and the Judicial Conference.

Publication of Rules Amendments in Response to Stern v. Marshall

The Advisory Committee recommended amendments to five bankruptcy rules in response to *Stern v. Marshall*, 131 S.Ct. 2594 (2011). The proposed amendments address the concern that, under *Stern, some* core proceedings in bankruptcy because some proceedings in bankruptcy as provided by 28 U.S.C. § 157(b) may fall beyond a bankruptcy judge's constitutional power to enter final judgment.

The proposed amendments will alter the Bankruptcy Rules in three respects. First, the terms core and non-core will be removed from Rules 7008, 7012, 9027, and 9033 to avoid possible confusion in light of *Stern*. Second, parties in all bankruptcy proceedings (including removed actions) will be required to state whether they do or do not consent to entry of final orders or judgment by the bankruptcy judge. Third, Rule 7016, which governs pretrial procedures, will be amended to direct bankruptcy courts to decide the proper treatment of proceedings.

Publication of Forms Modernization Amendments

The Advisory Committee requested publication of the first group of modernized forms proposed by its Forms Subcommittee's Forms Modernization Project (the "FMP"). Revised Bankruptcy Official Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1, and 22C-2 – which include fee waiver and installment fee forms, income and expense forms, and means test forms – involve only individual debtors and replace existing forms.

Early in its work, the FMP decided to separate the forms for individuals and the forms for non-individuals because separate areas of inquiry apply to each group. In addition, there is a greater need for the forms used by individuals to be less technical. Many individuals filing for bankruptcy are less sophisticated than other entities filing and may not have the assistance of counsel.

The dual goals of the FMP are to improve the official bankruptcy forms and to improve the interface between the forms and available technology. By making the forms and instructions

easier to understand, it is anticipated that more accurate and complete information will be collected. In addition, the look and feel of the forms has been streamlined to make them easier to read.

The modernized forms are being designed to use the enhanced technology that will become available through the next generation of CM/ECF, including the ability to access the data submitted through the forms so that authorized users can produce customized reports containing the information displayed in whatever format they choose. The remaining FMP forms will be published after the FMP evaluates the comments received from this first publication package.

Publication of Revised Bankruptcy Appellate Rules

After a multi-year review and evaluation of the Bankruptcy Rules that govern appeals from judgments, orders, and decrees entered by bankruptcy judges, the Advisory Committee requested publication for public comment of proposed new Rules 8001 to 8027.

The comprehensive revision of Part VIII of the Bankruptcy Rules is intended to bring the rules into closer alignment with the Federal Rules of Appellate Procedure and to take advantage of the electronic filing and storage of court documents. Existing rules have been reorganized and renumbered, some rules have been combined, and provisions of other rules have been moved to several new locations. Much of the language of the existing rules has been restyled.

Publication of Other Rules Amendments

Proposed amendments to Rules 1014, 7004, 9023, and 9024 were published for comment, as requested by the Advisory Committee.

Rule 1014(b) governs the procedure for determining where cases will proceed if petitions are filed in different districts by, against, or regarding the same debtor or related debtors. On motion, the court in which the first-filed petition is pending may determine the district or districts in which the cases will proceed. The proposed amendment provides that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending.

The proposed amendment to Rule 7004(e) would reduce from 14 to 7 days the time in which a party may serve a summons after its issuance. Because the Bankruptcy Rules calculate the defendant's time to respond from the date a summons is issued (and not the date it is served), the change is intended to reduce the likelihood that a defendant will have inadequate time to respond, without fundamentally altering the way the time is calculated under the Bankruptcy Rules.

As amended, Rules 9023 and 9024 would provide cross-references to new Rule 8008, which is part of the revised rules for bankruptcy appeals. Under the new rule, the bankruptcy court could issue an indicative ruling when the court determines that, because of a pending appeal, the court lacks meritorious or raises a substantial issue. The new rule is an adaptation of Civil Rule 62.1 and Appellate Rule 12.1.

The rules and forms published for comment were posted at the following link beginning in mid-August 2012: http://www.uscourts.gov/RulesAndPolicies/rules/proposed-amendments.aspx.

The comment period closes February 15, 2013.