

Summary of 2014 Changes to Federal Rules of Bankruptcy Procedure

Rule 1014(b)

Rule 1014(b) addresses the procedure when petitions involving the same or related debtors are filed in different courts. The amendment to Rule 1014(b) provides that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending, and would expand the list of persons entitled to receive notice of a motion in the first court for a determination of where the related cases should proceed.

Rule 7004(e)

The amendment to Rule 7004(e) alters the period of time during which service of the summons and complaint must be made, reducing the period from 14 days to 7 days after issuance of the summons. Because Rule 7012 provides that the defendant's time to answer the complaint is calculated from the date the summons is issued, a lengthy delay between issuance and service of the summons may unduly shorten the defendant's time to respond. Therefore, this amendment seeks to ensure prompt service.

Courts should review any local forms or other court information that references time periods to ensure that they are consistent with the changes to Rule 7004.

Rules 7008(b) and 7054

The proposed amendments to these rules would change the procedure for seeking attorney's fees in bankruptcy proceedings, bringing the Bankruptcy Rules in closer alignment with the Civil Rules.

- Rule 7008(b), which currently addresses attorney's fees, will be deleted.
- Rule 7054 will include the procedures for seeking an award of attorney's fees, unless the governing substantive law requires the fees to be provided at trial as an element of damages.

Rules Governing Appeals - Rules 8001-8028

- The amendments to Part 8 of the Bankruptcy Rules govern appeals to district courts and bankruptcy appellate panels.
- The purpose of the amendments is to: (1) bring the bankruptcy appellate rules into closer alignment with the Federal Rules of Appellate Procedure; (2) incorporate a presumption favoring electronic transmission, filing and service of court documents; and (3) adopt a clearer and simpler style.
- Some highlights of the revised rules related to appeals include:

- Rule 8003 requires the clerk to serve the notice of appeal instead of providing notice of the filing of the notice of appeal. The Notice of Electronic Filing (NEF) will suffice as notice except when pro se parties are involved.
- Rule 8003(d)(1) requires the clerk to transmit the notice of appeal promptly to the district court or BAP. The Committee note makes clear that this transmission should no longer be delayed until the record is complete. Each district should determine how best to transmit the notice of appeal within the district.
- Rule 8005(a) eliminates the requirement that a separate document be filed when a party to an appeal opts out of the BAP. (Also see discussion of Official Form 17 below).
- Rule 8009
 - ▶ addresses transcripts, when a transcript is or is not ordered, and allows an appellant to file a statement of in lieu of transcript, when a transcript is unavailable. Courts may want to consider a local rule defining the circumstances under which a transcript would be considered “unavailable.”
 - ▶ permits the parties to file an agreed statement as to the record on appeal (in lieu of the record on appeal).
 - ▶ if a sealed document is designated as part of the record on appeal, the party making the designation must file a motion requesting that the appellate court accept the sealed document. The Committee Note states that the bankruptcy court may not transmit the designated sealed document without an order from the appellate court.
- Rule 8010 requires that if a party moves in the district, BAP, or court of appeals for any of the following: leave to appeal; dismissal; a stay pending appeal; approval of a supersedeas bond, or additional security on a bond or undertaking on appeal; or any other intermediate order, the bankruptcy clerk must transmit to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal or a notice that those parts are available electronically. Courts may want to consider a local rule requiring the movant to notify the bankruptcy court of the filing of such a motion, as well as the disposition of the motion, and to identify what records need to be transmitted. Courts should seek to transmit notice electronically.

Forms 17 A, 17B, and 17C

Official Form 17 will be replaced by three separate forms: 17A, 17B, and 17C. Official Form 17A is the Notice of Appeal and Statement of Election, Part 4 of which applies to BAP courts only and allows the appellant the option of electing to have the appeal heard by district court. Form 17B is the (optional) Appellee Statement of Election to have the appeal heard in district court instead of the BAP. Form 17C pertains to the length of briefs.

Rules Governing New Trials, Amendment of Judgments and Relief from Judgment or Order

- Rule 9023 (governing new trials and amendment of judgments) and Rule 9024 (governing relief from a judgment or order) will add reference to the procedure in amended Rule 8008 addressing indicative rulings.
- Rule 8008 provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue.

The following rule changes will not take effect this year:

Proposed Amendments in Response to *Stern v. Marshall*, 131 S. Ct. 2594 (2011)

(7008, 7012, 7016, 9027, and 9033)

- The proposed *Stern*-related amendments to 7008, 7012, 7016, 9027, and 9033 were withdrawn due to the case of *Executive Benefits Insurance Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (9th Cir. 2012), cert. granted, 133 S.Ct. 2880, 186 L.Ed.2d 908 (2013). The Supreme Court issued its opinion in the *Bellingham* case on June 9, 2014, which will be considered by the Rules Committee at an upcoming meeting.