

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

LEE H. ROSENTHAL
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MEMORANDUM

TO: Honorable Lee H. Rosenthal, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Eugene R. Wedoff, Chair
Advisory Committee on Bankruptcy Rules

DATE: December 6, 2010

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on September 30 and October 1, 2010, in Santa Fe, New Mexico, to consider a number of proposed amendments to the Bankruptcy Rules and Official Forms. These proposals were suggested by members of the bench and bar or were responsive to recent Supreme Court decisions or to earlier rule changes. The draft minutes of that meeting are attached to this report as Appendix A.

The Advisory Committee is not submitting any action items to the Standing Committee at this meeting. At the Standing Committee's June meeting, the Advisory Committee anticipates submitting proposals for some rule and form amendments on which it is continuing to work, along with any rules and forms published for comment in August 2010 that the Advisory Committee approves at its spring meeting.

This report discusses several information items, including two continuing, multi-year projects of the Advisory Committee. These information items are the following:

- a. the proposed rule and form amendments published for comment in August 2010;
- b. a revision of the Part VIII (appellate) Bankruptcy Rules;
- c. the Forms Modernization Project;
- d. the impact of the Supreme Court's *Lanning* and *Schwab* decisions;
- e. conforming amendment of Interim Rule 1007-I; and
- f. communication to the courts about the reduction of a time limit in Rule 1007(a).

II. Information Items

A. Publication of Proposed Amendments to Bankruptcy Rules and Official Forms

At the June 2010 meeting, the Standing Committee authorized the publication of proposed amendments to Bankruptcy Rules 3001, 7054, and 7056, and amendments to Official Forms 10 and 25A. It also approved for publication three new Official Forms – Form 10 (Attachment A); Form 10 (Supplement 1); and Form 10 (Supplement 2) – which were proposed to implement pending rule amendments addressing home mortgage claims. The deadline for the submission of comments on these proposals is February 16, 2011. Thus far two comments have been submitted on the proposals. Public hearings on the proposals are scheduled for January 7, 2011, in San Francisco, and February 4, 2011, in Washington, D.C.

The Advisory Committee will consider all of the comments submitted on these proposals during its April 2011 meeting. The Advisory Committee anticipates that it will present these amendments, with any appropriate changes, to the Standing Committee at its June 2011 meeting for its approval and transmittal to the Judicial Conference.

B. Revision of the Bankruptcy Appellate Rules

At its fall meeting, the Advisory Committee reviewed a partial draft of a revision of Part VIII of the Bankruptcy Rules. This ongoing project seeks, among other things, to adopt a clearer and more accessible style for the bankruptcy appellate rules, bring them into closer alignment with the Federal Rules of Appellate Procedure (“FRAP”), and modernize them to take advantage of current and future technologies for filing, transmitting, and accessing court documents. The Advisory Committee discussed several issues presented by the current draft, including the following:

- a revision of the rules to require the prompt docketing of appeals in the appellate court upon its receipt of the notice of appeal, rather than, as under the current rules, upon its receipt of the completed record;
- the appropriate procedures for electing to have an appeal heard by a district court, rather than a bankruptcy appellate panel, and for resolving disputes over the validity of an election; and
- the advantages and disadvantages of having a self-contained set of bankruptcy appellate rules, as opposed to rules that incorporate by reference FRAP provisions (similar to Part VII’s incorporation of the Federal Rules of Civil Procedure).

Discussion of the last issue revealed support by many members of the Advisory Committee for drafting Part VIII as a self-contained set of rules. Some members noted the complexity of incorporating FRAP by reference into the bankruptcy rules, since – unlike appeals

from a district court – there are sometimes two or three appellate courts to which an appeal may be taken from a bankruptcy court (district court, bankruptcy appellate panel, court of appeals). Other differences between bankruptcy and district court cases – such as the existence within a single bankruptcy case of multiple adversary proceedings, the sometimes voluminous bankruptcy case docket, and the parties’ ability to elect an appellate forum in some cases – may also complicate the wholesale incorporation of FRAP provisions into the Bankruptcy Rules. Other Committee members expressed concern about requiring bankruptcy lawyers to consult, in addition to Part VIII, another set of rules with which many bankruptcy practitioners may be less familiar than with the Civil Rules that are incorporated by reference into Part VII. Finally, some members noted that one of the goals of the revision project, incorporating into the bankruptcy appellate process the use of electronic filing technology, necessitates a departure from the existing FRAP provisions.

Other Committee members voiced support for incorporating by reference in Part VIII existing FRAP provisions, with any necessary modifications stated. Among the other advantages of this approach that they pointed out are the reduction of the length and prolixity of Part VIII and the automatic revision of the bankruptcy appellate rules as FRAP is amended.

In order to illustrate both approaches, Appendix B contains two revisions of proposed Rule 8003. The first option is based on FRAP 3 and 12(a), and it restates in adapted form much of the content of the two appellate rules. The second option incorporates by reference most of FRAP 3 and 12(a) – subject to listed exceptions. Both versions rely on definitions of “appellate court” and “transmit” that are included in proposed Rule 8001.

In the spring the Advisory Committee will meet jointly with the Advisory Committee on Appellate Rules to obtain that committee’s input on the proposed revision of Part VIII and to ensure that the revised bankruptcy rules and FRAP are compatible. Given the scope of the project and the need for careful review of both style and substance by both the Advisory Committee and Standing Committee, the most likely date for publication for comment of the proposed Part VIII revision is August 2012.

C. Forms Modernization Project

The Advisory Committee continues its multi-year Forms Modernization Project (“FMP”), which was initiated to develop recommendations both for making the bankruptcy forms more user-friendly and less error-prone and for taking better advantage of modern information technology.

Next spring the FMP will begin testing with various groups a bankruptcy filing package for individual debtors. Initial drafts of most of the forms in the filing package have been completed or will be completed by the end of 2010. The project’s goal is to incorporate the feedback from the testing phase and to present parts of the filing package to the Advisory

Committee at its fall 2011 and spring 2012 meetings so that the package will be on track to be presented to the Standing Committee for its approval of an August 2012 publication date.

As part of the prepublication testing phase, the FMP will identify and solicit feedback from representatives of professional organizations, software providers, a group of career law clerks, a group of “occasional” attorney filers, and lay people. At the same time, the project will finish drafts of the remaining forms for individuals and will begin drafting forms for businesses so that a second group of forms may be considered for publication in August 2013.

The Advisory Committee’s Subcommittee on Forms leads the project with assistance from representatives from the Advisory Committee, the Bankruptcy Judges Advisory Group, the Bankruptcy Clerks Advisory Group, the CM/ECF NextGen Project, the Federal Judicial Center, the United States Trustee Program, and bankruptcy administrators.

D. Impact of the Supreme Court’s *Lanning* and *Schwab* Decisions

At its fall meeting, the Advisory Committee considered the impact of two Supreme Court decisions from last Term – *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), and *Schwab v. Reilly*, 130 S. Ct. 2652 (2010).

Lanning concerned the calculation of a chapter 13 debtor’s “projected disposable income,” which under § 1325(b)(1) of the Bankruptcy Code the debtor’s plan may be required to devote to payment of unsecured claims. The Court rejected a purely “mechanical” approach to the calculation that considers only the debtor’s average monthly income for the six months before bankruptcy. The Court instead adopted a “forward-looking” approach that allows consideration of changes in the debtor’s income and expenses that have occurred before confirmation or are virtually certain to occur afterward. Because Form 22C¹ calculates disposable income for above-median-income debtors – following the Code definition of “disposable income” – based only on information about the debtor’s prebankruptcy average income and current expenses, the Advisory Committee considered whether the form should be amended.

The Committee tentatively approved adding a question to Form 22C in which above-median-income chapter 13 debtors would list any changes in the income and expenses reported on the form that have already occurred or are virtually certain to occur during the 12 months following the filing of the petition. The same time frame for reporting anticipated changes is set out in § 521(a)(1)(vi) of the Code and is included in Schedules I and J (Current Income and Current Expenditures of Individual Debtor(s)).

¹ Official Form 22C is the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income.

In *Schwab* the Supreme Court held that an objection under § 522(*l*) of the Bankruptcy Code and Rule 4003 is not required in order for a trustee to limit the value of a debtor's exemption claim to the amount of the exemption stated by the debtor, even when the debtor values the exempted property at the same amount as the exemption. The Court reasoned that the debtor's listing of the claimed exemption and the value of the property in the same amount did not put the trustee on notice that the debtor was claiming as exempt the full fair market value of the property, whatever that value turned out to be. The Committee considered whether Official Form 6, Schedule C (Property Claimed as Exempt) should be revised as a result of *Schwab*.

The Advisory Committee tentatively agreed to amend Schedule C to permit the debtor to state an intention to exempt "the full fair market value of the property" in a manner that would put the trustee on notice of the need to object if the trustee believes the value of the property exceeds the allowed exemption amount. Subsequent to the fall meeting, the Consumer and Forms Subcommittees have considered draft language for the amendment.

If approved by the Advisory Committee at its spring meeting, the Standing Committee will be asked to approve the amendments to Form 22C and Schedule C for publication for comment in August 2011.

E. Conforming Amendment of Interim Rule 1007-I

In a memorandum dated December 5, 2008, the Director of the Administrative Office transmitted to district and bankruptcy courts the recommendation of the Executive Committee of the Judicial Conference that these courts adopt by local rule or standing order Interim Bankruptcy Rule 1007-I, which implemented the National Guard and Reservists Debt Relief Act of 2008. The Act excludes certain members of the National Guard and Reserves from means testing in chapter 7 bankruptcy cases. Because the Act took effect 60 days after enactment and applies only to bankruptcy cases that are begun in the three-year period beginning December 19, 2008, it was implemented by an interim rule, rather than by an amendment of Rule 1007.

Interim Rule 1007-I includes time deadlines contained in Bankruptcy Rule 1007. One of those deadlines was amended effective December 1, 2010. The amendment to Rule 1007(c) extended the time to file the statement of completion of a course in personal financial management in a chapter 7 case filed by an individual debtor from 45 days after the first date set for the meeting of creditors to 60 days after the first date set for the meeting. In response to this amendment, the chairs of the Standing Committee and the Advisory Committee sent a memorandum on November 4, 2010, advising courts that had adopted Interim Rule 1007-I of the need to revise the interim rule's deadline for filing the statement of completion, consistent with the December 1, 2010, change to that time period in Rule 1007. The same procedure was recommended when other deadlines in Rule 1007 were revised in 2009.

F. Communication to Bankruptcy Courts About Reduction of a Time Limit in Rule 1007(a)

On December 1, 2010, Rule 1007(a)(2) was amended to reduce from 14 to 7 days the time for a debtor in an involuntary case to file a list of creditors' names and addresses. During review of the amendment by Congress, House Judiciary Committee staff members expressed concern that some involuntary debtors might be unaware of this change. Although involuntary bankruptcy cases are extremely rare, the Administrative Office, in consultation with the chairs of the Standing and Advisory Committees, agreed to take action in response to the expressed concern. A communication to bankruptcy courts from the Director of the Administrative Office about the amendments that took effect on December 1 highlighted this timing change and pointed out the court's authority to extend the deadline for cause. The memorandum noted that a failure to meet the new deadline due to a lack of knowledge about the amendment might be an especially appropriate ground for an extension during the first six months after the effective date of the shorter time limit.

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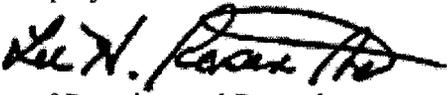
RICHARD C. TALLMAN
CRIMINAL RULES

SIDNEY A. FITZWATER
EVIDENCE RULES

November 4, 2010

MEMORANDUM

To: Chief Judges, United States District Courts
Judges, United States Bankruptcy Courts

From: Judge Lee H. Rosenthal 
Chair, Committee on Rules of Practice and Procedures

Judge Eugene R. Wedoff 
Chair, Advisory Committee on Bankruptcy Rules

RE: AMENDMENT TO INTERIM BANKRUPTCY RULE 1007-I EFFECTIVE
DECEMBER 1, 2010 (IMPORTANT INFORMATION)

In a memorandum dated December 5, 2008, the Director of the Administrative Office transmitted to you the recommendation of the Executive Committee, acting on behalf of the Judicial Conference, to adopt by local rule or standing order Interim Bankruptcy Rule 1007-I, which implemented the National Guard and Reservists Debt Relief Act of 2008. The Act excludes certain members of the National Guard and Reserves from means testing in chapter 7 bankruptcy cases that are begun in the three-year period beginning December 19, 2008.

Interim Rule 1007-I included time deadlines contained in Bankruptcy Rule 1007. One of those deadlines will be amended effective December 1, 2010 unless Congress acts to the contrary. The amendment will extend the time to file the statement of completion

of a course in personal financial management in a chapter 7 case filed by an individual debtor from 45 days after the first date set for the meeting of creditors to 60 days after the first date set for the meeting. If your district adopted Interim Rule 1007-I, the deadline for filing the statement of completion should be revised effective December 1, 2010, consistent with the change to the time in Rule 1007. The same procedure was recommended when other deadlines in Rule 1007 were revised last year.

A copy of revised Interim Rule 1007-I is distributed with this memorandum. Effective December 1, 2010, revised Interim Rule 1007-I will also be posted on the "Rules and Forms In Effect" page of the courts' public website at:
<http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/RulesAndForms.aspx>.

If you have any questions about these amendments, please call or e-mail either of us or call Peter G. McCabe, Assistant Director for the Office of Judges Programs, at 202-502-1800 or Scott Myers, Attorney, Bankruptcy Judges Division, at 202-502-1900.

Attachment

cc: District Court Executives
Clerks, United States District Courts
Clerks, United States Bankruptcy Courts

Interim Rule 1007-I.¹ Lists, Schedules, Statements, and Other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion²

1

* * * * *

2

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS

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REQUIRED.

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(4) Unless either: (A) § 707(b)(2)(D)(i) applies, or (B) §

6

707(b)(2)(D)(ii) applies and the exclusion from means testing granted therein extends

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beyond the period specified by Rule 1017(e),

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an individual debtor in a chapter 7 case shall file a statement of current monthly

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income prepared as prescribed by the appropriate Official Form, and, if the current

10

monthly income exceeds the median family income for the applicable state and

11

household size, the information, including calculations, required by § 707(b),

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prepared as prescribed by the appropriate Official Form.

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* * * * *

¹Interim Rule 1007-I was adopted by the bankruptcy courts to implement the National Guard and Reservists Debt Relief Act of 2008, Public Law No: 110-438. The Act, which provides a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces, applies to bankruptcy cases commenced in the three-year period beginning December 19, 2008.

² Incorporates (1) time amendments to Rule 1007 which took effect on December 1, 2009, and (2) an amendment, effective December 1, 2010, which extended the time to file the statement of completion of a course in personal financial management in a chapter 7 case filed by an individual debtor.

14 (c) TIME LIMITS. In a voluntary case, the schedules, statements, and other
15 documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the
16 petition or within 14 days thereafter, except as otherwise provided in subdivisions
17 (d), (e), (f), (h), and (n) of this rule. In an involuntary case, the list in subdivision
18 (a)(2), and the schedules, statements, and other documents required by subdivision
19 (b)(1) shall be filed by the debtor within 14 days of the entry of the order for relief.
20 In a voluntary case, the documents required by paragraphs (A), (C), and (D) of
21 subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise,
22 a debtor who has filed a statement under subdivision (b)(3)(B), shall file the
23 documents required by subdivision (b)(3)(A) within 14 days of the order for relief.
24 In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7)
25 within ~~45~~ 60 days after the first date set for the meeting of creditors under § 341 of
26 the Code, and in a chapter 11 or 13 case no later than the date when the last payment
27 was made by the debtor as required by the plan or the filing of a motion for a
28 discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any
29 time and in its discretion, enlarge the time to file the statement required by
30 subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8)
31 no earlier than the date of the last payment made under the plan or the date of the
32 filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the
33 Code. Lists, schedules, statements, and other documents filed prior to the conversion
34 of a case to another chapter shall be deemed filed in the converted case unless the
35 court directs otherwise. Except as provided in § 1116(3), any extension of time to

36 file schedules, statements, and other documents required under this rule may be
37 granted only on motion for cause shown and on notice to the United States trustee,
38 any committee elected under § 705 or appointed under § 1102 of the Code, trustee,
39 examiner, or other party as the court may direct. Notice of an extension shall be
40 given to the United States trustee and to any committee, trustee, or other party as the
41 court may direct.

42 * * * * *

43 (n) TIME LIMITS FOR, AND NOTICE TO, DEBTORS TEMPORARILY
44 EXCLUDED FROM MEANS TESTING.

45 (1) An individual debtor who is temporarily excluded from means testing
46 pursuant to § 707(b)(2)(D)(ii) of the Code shall file any statement and calculations
47 required by subdivision (b)(4) no later than 14 days after the expiration of the
48 temporary exclusion if the expiration occurs within the time specified by Rule
49 1017(e) for filing a motion pursuant to § 707(b)(2).

50 (2) If the temporary exclusion from means testing under § 707(b)(2)(D)(ii)
51 terminates due to the circumstances specified in subdivision (n)(1), and if the debtor
52 has not previously filed a statement and calculations required by subdivision (b)(4),
53 the clerk shall promptly notify the debtor that the required statement and calculations
54 must be filed within the time specified in subdivision (n)(1).

COMMITTEE NOTE

This rule is amended to take account of the enactment of the National Guard and Reservists Debt Relief Act of 2008, which amended § 707(b)(2)(D) of the Code to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. This exclusion applies to qualifying debtors while they remain on active duty or are performing a homeland defense activity, and for a period of 540 days thereafter. For some debtors initially covered by the exclusion, the protection from means testing will expire while their chapter 7 cases are pending, and at a point when a timely motion to dismiss under § 707(b)(2) can still be filed. Under the amended rule, these debtors are required to file the statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of their exclusion.

Subdivisions (b)(4) and (c) are amended to relieve debtors qualifying for an exclusion under § 707(b)(2)(D)(ii) from the obligation to file a statement of current monthly income and required calculations within the time period specified in subdivision (c).

Subdivision (n)(1) is added to specify the time for filing of the information required by subdivision (b)(4) by a debtor who initially qualifies for the means test exclusion under § 707(b)(2)(D)(ii), but whose exclusion expires during the time that a motion to dismiss under § 707(b)(2) may still be made under Rule 1017(e). If, upon the expiration of the temporary exclusion, a debtor has not already filed the required statement and calculations, subdivision (n)(2) directs the clerk to provide prompt notice to the debtor of the time for filing as set forth in subdivision (n)(1).



JUDICIAL CONFERENCE OF THE UNITED STATES

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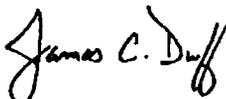
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

November 29, 2010

MEMORANDUM

To: All United States Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts
Chief Probation Officers
Chief Pretrial Services Officers
Senior Staff Attorneys
Chief Preargument/Conference Attorneys
Bankruptcy Administrators
Circuit Librarians

From: James C. Duff 

RE: AMENDMENTS TO THE FEDERAL RULES OF PRACTICE AND PROCEDURE
(IMPORTANT INFORMATION)

Congress has taken no action on the amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and the Federal Rules of Evidence, approved by the Supreme Court on April 28, 2010. Under the Rules Enabling Act, 28 U.S.C. § 2072, the following amendments to the rules will take effect on December 1, 2010:

- Appellate Rules 1, 4, and 29, and Appellate Form 4;
- Bankruptcy Rules 1007, 1014, 1015, 1018, 1019, 4001, 4004, 5009, 7001, and 9001, and new Rule 5012;
- Civil Rules 8, 26, and 56, and Illustrative Civil Form 52;
- Criminal Rules 12.3, 21, and 32.1; and
- Evidence Rule 804.

Under 28 U.S.C. § 2074(a) and the April 28, 2010, Supreme Court orders, the amendments will govern all proceedings commenced on or after December 1, 2010, and all proceedings then pending “insofar as just and practicable.”

The text of the amended rules and extensive supporting documentation can be found on the Judiciary’s Federal Rulemaking website at: <http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/Overview.aspx>. The amendments were mailed to you earlier this year as part of House Documents 111-110, 111-111, 111-112, 111-113, and 111-114. In addition, pamphlets containing the rules as amended will be sent to you as soon as they become available from the Government Printing Office.

Please note that amendments to several Bankruptcy Rules affect filing time periods in ways unrelated to the 2009 time-computation amendments. These amended filing requirements appear in Rule 1007(c) (which adds time) and in Rules 1019(2)(B), 5009, and 5012 (which create new filing periods). Additionally, an amendment to Rule 1007(a)(2) reduces from 14 days to 7 days the time for a debtor in an involuntary case to file a list of creditors’ names and addresses. A court may extend the time to file the list if a debtor shows cause, which may include a failure to meet the new deadline from lack of knowledge about the amendment, especially within the first six months after the shorter period becomes effective.

If you have any questions about the status of any of the amendments, please contact Peter G. McCabe, Assistant Director for Judges Programs, or James Ishida, Senior Attorney, Office of Judges Programs, at (202) 502-1800.