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cc

Subject Structure of General Order

Dear Committee:

Congratulations on getting rules out. They will greatly aid the transition to the new law.

I have a very technical question on the draft general order adopting the interim rules. Such a form would seem to be appropriate when a new rule is proposed, and the subject matter or designation of that rule is new. It would supplement the existing rules. (New Rule 1021 with respect to health care bankruptcies might be an example of such a rule)

But many of the interim rules replace in whole or in part existing rules. These existing rules have gone through the various sieves of the Rules Enabling Act and enjoy priority under existing Rule 9029.

This raises my question: how can what is essentially a local rule supplant a nationally adopted rule, even if that rule is not well-adapted to the new legislation? If a local district decided, for example, that the disclosures mandated by FRCP 26(a) were silly, and adopted a "local" general order or rule vitiating national Rule 26(a), I suggest that no one would have a problem in finding the local rule or general order invalid. Litigants would still have a good argument that notwithstanding the local rule, national FRCP26(a) still controls.

Thus, the problems I potentially see with the draft general order are that it might be seen to improperly supplant presumptively valid national rules, and that it ignores this problem.

Perhaps this can be cured by stating in the draft general order that the interim rules are intended to supplant and supersede the existing rules. That at least makes the issue clear.

Any help appreciated.

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