

12-BK-029



Public Comment on proposed amendments to Federal Rule of Bankruptcy Procedure 9027

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1 Attachment



memo to committee2..pdf

In 2011, the Advisory Committee for the Local Rules for the United States Bankruptcy Court for the Northern and Southern Districts of Mississippi submitted a proposed amendment to Federal Rule of Bankruptcy Procedure 9027 to the Committee on the Rules of Practice and Procedure. Receipt of the proposed amendment was acknowledged by Benjamin J. Robinson, Deputy Rules Officer and Counsel for the Rules Support Office, on December 22, 2011. The proposed amendment was docketed as 11-BK-M, and was to have been placed on the advisory committee's agenda for its March, 2012 meeting. The proposed amendment is set forth in the attached memorandum that was submitted to the Committee on the Rules of Practice and Procedure at that time. The proposed amendments to Rule 9027 that have been submitted for public comments do not address the issue raised in the memorandum.

As more fully explained in the memorandum, we requested a simple amendment to clarify that under Rule 9027, the notice of removal should be filed in the office of the clerk of the bankruptcy court, if one has been appointed, for the district and division where the civil action is pending. The current rule does not specify that the notice of removal should be filed with the clerk of the bankruptcy court and it has resulted in a split in our courts as to the proper clerk's office to file the notice of removal. We respectfully request that the advisory

committee reconsider the proposed amendments set forth in the attached memorandum and incorporate these proposed changes to Rule 9027 in addition to the amendments proposed for public comment.

Jim Spencer
Past Chairman,
Advisory Committee for the
Local Rules for the
United States Bankruptcy Court
for the Northern and
Southern Districts of Mississippi

**REQUEST TO COMMITTEE ON RULES
OF PRACTICE AND PROCEDURE**

**FROM: Advisory Committee to the Uniform Local Rules for the Northern and
 Southern Districts of Mississippi**

RE: Proposed Amendment to Federal Rule of Bankruptcy Procedure 9027

Title 28 U.S.C. § 1452(a), provides the statutory basis for removal of claims related to a bankruptcy case. Section 1452(a) states “ [a] party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if the district court has jurisdiction of such claim or cause of action under section 1334 of this title.”¹

Federal Rule of Bankruptcy Procedure 9027 governs the procedure for the removal of a case related to bankruptcy. Rule 9027(a)(1) states that “[a] notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending.” Rule 9001(3) defines “clerk” as the “bankruptcy clerk if one has been appointed, otherwise the clerk of the district court.”

There is a split of authority in the Northern and Southern Districts of Mississippi with respect to whether the notice of removal must be filed with the district court clerk or the bankruptcy court clerk.

In the Southern District of Mississippi, U.S. District Judge Henry T. Wingate has held that the notice must be filed with the district court clerk. *Morgan v. Bruce*, 1993 WL 786892(S.D. Miss. February 1, 1993). In *Morgan*, Judge Wingate stated:

This court is persuaded that Congress’ intent is that removal petitions under § 1452(a) should now be filed with the District Court, where under 28 U.S.C. § 157(a) the case may then be referred to the

¹ Pursuant to 28 U.S.C. § 1334(b) federal courts have original, but not exclusive, jurisdiction of all civil proceedings arising in, arising under or related to a bankruptcy case.

Bankruptcy Court.

Id at 6.

Judge Wingate further noted that although Federal Rule of Bankruptcy Procedure 9003(3) defined “clerk” as the “bankruptcy clerk,” in his view this was simply “a definitional conflict unnoticed by Congress when it amended the other Rules to reflect the Congressional intent that removed petitions under § 1452(a) be filed in the District Courts.” *Id* at 7.

This is not the majority view, which is followed in the Northern District of Mississippi. Instead, the majority of the courts have held that the notice should be filed with the bankruptcy court clerk. *In re: Coastal Plains, Inc.*, 326 B.R. 102, 108 (N.D. Texas 2005). In *Coastal Plains*, the court explained the majority view as follows:

The “bankruptcy court” is simply the name given to the judges in that district who have been appointed by the circuit to hear bankruptcy matters. See *In re: Gianakas*, 56 B.R. 747, 751 n.7 (N.D. Ill. 1985). (citing *in re: Northwest Cinema Corp.*, 49 B.R., 479 (Bankr. D. Minn. 1982)) (“[W]hile functionally there may appear to be a separate bankruptcy court, for jurisdiction purposes, there is only one court, i.e. the district court.”) The “bankruptcy court” obtains its jurisdiction as a unit of the district court and the order of reference. If the Plaintiffs’ argument was to be taken to its logical conclusion, then all bankruptcy cases filed in this district would have to be filed with the clerk of the “district court” because that is the term used in the statute.

Similarly, Federal Rule of Bankruptcy Procedure 9027(a) provides that “A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending.” For purposes of this rule, “clerk” means the clerk of the bankruptcy court, if one has been appointed, otherwise, it means the clerk of the district court. Fed R. Bankr. P 9001(3).

There is also some concern about whether the notice of removal should be filed in the district

where the civil action is pending or in the district where the bankruptcy case is pending. Further, if the civil action is pending in the same state as the bankruptcy proceeding but in a different district within the state, should the notice be filed with the bankruptcy court clerk in the district where the bankruptcy case is pending or with the bankruptcy court clerk in the district where the civil action is pending? In *White v. Casino Belle of Tunica*, 1994 U.S. District LEXIS 22173 (N.D. Miss. 1994), the United States District Court for the Northern District of Mississippi answered both of these questions. There, the court held that 28 U.S.C. § 1452 required that a state court action related to a bankruptcy case had to be removed to the district court for the district where the state court action was pending. Thereafter, that court could consider whether it was appropriate to transfer venue to the district where the bankruptcy case was pending.

Because of the split within our districts, practitioners are uncertain about the proper place to file a notice of removal. We believe this issue should be presented to the Advisory Committee to the Federal Rules of Bankruptcy Procedure with a request that it consider an amendment to Federal Rule of Bankruptcy Procedure 9027. The proposed amendment would provide that the notice of removal should be filed with the bankruptcy court clerk, if one has been appointed. The amendment would further provide that the notice of removal should be filed with the bankruptcy court clerk for the district and division where the civil action is pending. Finally, the amendment would clarify that with respect to any civil action pending in another state, the notice of removal should be filed with the bankruptcy court clerk for the district and division of the state where the civil action is pending. Thereafter, venue may be transferred to the bankruptcy court where the bankruptcy case is pending, if transfer is appropriate under the change of venue statutes.