United States Bankruptcy Court
Western District of Missouri

Notice of Amendments to Bankruptcy Rules and Forms
Effective December 1, 2014

On April 25, 2014, the Supreme Court approved amendments to the Federal Rules of Bankruptcy Procedure which will take effect on December 1, 2014.

The amendments to the bankruptcy rules address the following: 1) petitions involving the same debtors filed in different courts; 2) time limits for serving a summons and complaint; 3) general pleadings and judgments and costs; 4) bankruptcy appeals; and 5) new trials and relief from a judgment or order. The amended rules are located at:

http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/congressional-package-forcongress.pdf.

Several official forms will be updated to address the amended rules. A complete list of the revised forms and instructions is posted at:

http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx

Summary of Changes to Federal Rules of Bankruptcy Procedure and Related Forms

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.

Rules 7008(b) and 7054

The 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) required 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.

- 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 the discussion relating to Official Form 17, below).

- Rule 8009

    - Addresses transcripts, when a transcript is or is not ordered, and allows an appellant to file a statement in lieu of transcript, when a transcript is 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.

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.

Forms 22A, 22B and 22C

Official Forms 22A-1 (Chapter 7 Statement of Your Current Monthly Income), 22A-1 Supp (Statement of Exemption from Presumption of Abuse Under §707(b)(2)), 22A-2 (Chapter 7 Means Test Calculation), 22B (Chapter 11 Statement of Your Current Monthly Income), 22C-1 (Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period) and 22C-2 (Chapter 13 Calculation of Your Disposable Income) are the revised means test forms. These forms are revised to accommodate changes in the law as a result of Supreme Court precedent and as part of the Bankruptcy Rules Advisory Committee's ongoing Forms Modernization Project.

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.