

AMENDMENTS TO BANKRUPTCY RULES, FORMS AND FEES **EFFECTIVE DECEMBER 1, 2014**

On April 25, 2014, the Supreme Court approved amendments to the Federal Rules of Bankruptcy Procedure. Several official forms will be updated to address the amended rules. At its September 2014 session, the Judicial Conference approved changes to the Bankruptcy Court Miscellaneous Fee Schedule. All changes become effective on December 1, 2014.

The following is a detailed summary of the changes.

Summary of 2014 Changes to Federal Rules of Bankruptcy Procedure

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) 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 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.
- **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 and the record on appeal.
 - When a transcript is or is not ordered, an appellant may file a statement of the evidence or proceedings in lieu of transcript, when a transcript is unavailable. The Court will enter a General order to address the circumstances under which a transcript would be considered “unavailable.”
 - Parties may 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. The Court will enter a General Order 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.

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 amended rules are located at:

<http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/congressional-package-for-congress.pdf>

Summary of 2014 Official Form Changes

- Official Forms 3A (Application for Individuals to Pay the Filing Fee in Installments) and 3B (Application to Have the Chapter 7 Filing Fee Waived) are revised to remove references to fee amounts.
- Official Form B6Sum (Summary) is revised to update line number cross references to the revised means test forms (Official Forms 22A-1, 22A-1 Supp, 22A-2, 22B, 22C-1 and 22C-2).
- Official Forms 17A (Notice of Appeal and Statement of Election), 17B (Optional Appellee Statement of Election to Proceed in District Court) and 17C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)) are new forms set to go into effect with the revised bankruptcy appellate rules.
- 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.

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 Bankruptcy Court Miscellaneous Fee Schedule

Item 14 - An increase fee of \$50.00 (from \$157 to \$207) when a direct bankruptcy appeal is accepted by a court of appeals.

Item 21 – This is a new fee for filing a Motion for Redaction of personal identifiers per Fed. R. Bankr P. 9037. The fee is \$25.00 per affected case. The Judicial Conference clarified that if the case is closed, no reopening fee is required if the only purpose for reopening is redaction. Item 21 specifies that the court may waive the redaction fee in appropriate circumstances. For example, if a debtor files a motion to redact personal identifiers from records that were filed by a creditor in the case, the court may determine it is appropriate to waive the fee for the debtor.

Please note: More information on new docket events and procedures related to these changes will be posted in a later notice.