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08-Bk-004

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

Re Comment on Proposed New Federal Rule of Bankruptcy Procedure 1004.2

Dear Mr. McCabe,

Proposed Bankruptcy Rule 1004.2(b) sets a 60-day deadline to file a motion challenging the designation of debtor's main interests as stated in the petition for recognition of a foreign proceeding under Chapter 15 of the Bankruptcy Code. However, the proposed rule does not clearly identify the event from which the 60-day deadline is counted.

As proposed, the rule states, "[t]he motion shall be filed no later than 60 days after notice of the petition has been given to the movant under Rule 2002(q)(1)" (emphasis added). Facially, the rule requires the 60-day period to be counted from the time "notice of the petition" is "given." However, the proposed rule does not clearly define the precise event that equates to giving notice. Is notice "given" upon movant's receipt of the notice, upon mailing of the notice, or upon service of the notice? It is important to clarify the ambiguity so that practitioners know the date from which to begin counting the period and know whether to apply the provisions of Bankruptcy Rule 9006(f) allowing for extra time after service by mail.

Furthermore, Rule 2002(q)(1) requires "at least 20 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding." Although the subsection is titled "Notice of Petition for Recognition," the text requires notice of the hearing on the petition rather than notice of the petition itself. To align the two rules, proposed Rule 1004.2(b) should refer to notice of the hearing on the petition.

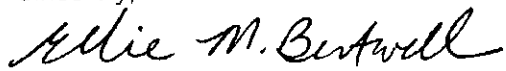
To eliminate any ambiguity in the computation of the deadline, we suggest modifying proposed Rule 1004.2 to state that the period is counted from an easily ascertainable date. Such event may be the date of receipt or the date of service of the notice of the hearing on the petition for recognition, as determined by the Committee.

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We also note a possible discrepancy between proposed Rule 1004 2(b) and Rule 2002(q)(1) if the intent is for the Rule 1004 2(b) motion to be resolved prior to or heard at the hearing on the petition. The date of the hearing on the petition may pass before the 60-day period for filing a motion under Rule 1004.2(b) has expired

Thank you for your consideration of these comments

Sincerely,

A handwritten signature in cursive script that reads "Ellie M. Bertwell". The signature is written in black ink and is positioned above the typed name.

Ellie M. Bertwell, Esq