

07-BR-007



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To: <Rules_Comments@ao.uscourts.gov>

cc

Subject: Proposed amendment of Bankruptcy Rule 8002

Dear Rules Committee,

As a practitioner, having been involved with over 30 bankruptcy appeals over my career, I support an extension of the current 10-day deadline within which to file a bankruptcy appeal. While the proposed 14-day deadline is an improvement, I would further support a 30-day deadline identical to the default rule for appeals from a district court to a federal circuit court.

My view is that while the current 10-day rule is intended to expedite bankruptcy appeals, as a practical matter, we have a "hurry up and wait" appeal system as a practical matter. Parties are required to process bankruptcy appeals on an expedited timetable to the federal district courts, but then the bankruptcy appeal tends to languish – often up to a year – awaiting decision from the district court. If the parties had more time at the front end (say 30 days instead of 10 days) to decide whether to pursue an appeal, perhaps parties would make better decisions whether to prosecute an appeal, and parties would have more time to prepare their briefs (which hopefully would result in a better work product for the appeals court to review).

Another consideration is the impact of the BAPCPA amendment to 28 U.S.C. section 158, which now authorizes a direct appeal from a bankruptcy court to the courts of appeal. The 2005 BAPCPA amendment has had the effect of expediting bankruptcy appeals. Far too often in the past, an appeal from a bankruptcy court to an intermediate district court amounted to a "practice round" that took six months to a year to have adjudicated, before access to the court of appeals was allowed. Once the district court ruled, the 30-day notice of appeal rule applies to the circuit court appeal, so ironically the 30-day deadline eventually comes into play in most bankruptcy appeals. With the possibility of a direct appeal to a circuit court under BAPCPA, which in most cases will result in a substantially shortened final disposition, the enlargement of the initial appeal deadline from 10 days to say 30-days seems inconsequential.

While some may have concerns about the delay resulting from an extension of the bankruptcy court appeal deadline beyond 10-days, courts have relied upon the judge-made "equitable

mootness" doctrine to weed out appeals where the delay results in prejudice.

So all things considered, seems to me an enlargement from 10-days to 30-days is well advised.

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