

**Comments and Suggestions on Proposed Amendments
to the Federal Rules of Bankruptcy Procedure and Official
Forms, Presented by the Committee on Rules of Practice and
Procedure of the Judicial Conference of the United States in August 2006**

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Rules

1007(b)(7) Our experience with practice under BAPCPA since October 17, 2005, has shown that our customers often confuse the pre-petition counseling requirement with the post-petition education requirement, and we have on more than a few occasions seen the pre-petition certificate submitted with the post-petition certification form. Because completion of the post-petition education is required for entitlement to discharge, we consider it critical.

and OF 23 I recommend that the rule (and OF 23) require filing of the certificate of completion of the post-petition course – not just the debtor's certification of completion of the course.

It doesn't appear that requiring the debtor to submit the certificate presents any burden to the debtor – I understand that UST-approved counseling agencies can easily print certificates of completion from the website at <https://ccdecert.ustp.usdoj.gov/ccdecert/>. A sample of such a site-generated certificate is included as an attachment to the e-mail message which includes these comments for your reference. The assurance provided from seeing the certificate itself is really important.

and rule

4001(c)(1)(H) I suggest that the wording of this section of the rule require the filing of the certificate of completion itself, not just a statement (or certification) of completion.

1007(c) Rewriting this section to enhance readability and make it easier to cite to specific requirements would be really nice. Perhaps it could be separated by due dates, for example: (1) with the petition: [these things], (2) with the petition or within 15 days thereafter: [these things], (3) within 15 days of the order for relief: [these things], (4) within 45 days after the date first set for the 341 meeting: [these things], etc.

2003 It has always been a challenge to comply with the requirements of rule 2003 in

involuntary cases because rule 1007(a)(2) gives the debtor 15 days after the order for relief to submit the list of creditors. Practically, we have two choices – (1) send the 341 notice to a very limited set of people (existing case participants) and leave the debtor responsible for sending the 341 notice to the additional persons included in the later-filed list of creditors, and thereby maintain compliance with rule 2003, or (2) wait until the list of creditors is filed to send out the 341 notice, thereby, in most cases, not complying with rule 2003 but better complying with rule 2002 and not laying that responsibility off on the debtor.

If the existing provisions of rule 2003 were prefaced with, “In a voluntary case,” and if there was a separate provision for “In an involuntary case” which allowed for the “15 days after the order for relief” timing (and any extensions which might be granted), then that would solve the problem.

8001(f)(2) “A matter is pending in the district court or the bankruptcy appellate panel after the docketing, in accordance with Rule 8007(b), of an appeal taken” Rule 8007(b) provides, “On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket. . . .”

In New Mexico, the practice of the district court has been to open a civil proceeding and to docket the notice of appeal upon receipt of the bankruptcy clerk’s certificate of service of notice of appeal pursuant to rule 8004. The district court clerk’s office has requested the bankruptcy court clerk to include it as a recipient of the certificate of service. This approach has always raised a question as to the date of “docketing of the appeal” and the deadlines that result from that event set forth in rule 8009. (The Tenth Circuit BAP has a local rule which makes the situation clear.) As a result, I am not so sure that the “bright-line” test will be sufficiently bright in practice.

Official Forms

Suggestions for all official forms:

(1) All official forms should contain a standard caption which meets the requirements of rule 1005, rule 2002(n), rule 9004(b), and section 342(c). And the format of the name of the court should be the same on all forms: United States Bankruptcy Court, _____ District of _____. Many of them are printed as “_____ District Of _____.”

(2) All official forms should contain a standard format for signature of a document which includes a signature line, the name of the person signing the form, the name, address (including zip + 4 code), and telephone number of the

person, and the person's e-mail address. The great variety of formats included in the current versions of official forms is unnecessarily confusing and can make it difficult for the clerk to identify the person and the person's contact information.

(3) Please see the discussion of numbering conventions for official forms and procedural forms included in the suggestions for OF 1, below.

OF 1 If the sense is that the zip code needs to be split out from an "address," then the box for the zip code should be labeled and sized to call for use of the zip + 4 code.

The page two reference to OF 1 should be labeled "OF 1, page 2" or "Official Form 1, page 2," and not as "Form B1, Page 2."

Calling OF 1 "Form B1" loses the historical distinction between "Official Forms" prescribed by the Judicial Conference of the United States and additional forms issued by the Director of the AOUSC, known as "procedural forms" and labeled as "B #."

This problem also occurs with a number of other official forms, e.g., OF 22, which is labeled "B22." And there are other variations, such as Official Form 15, which is labeled "Form B15," and Official Form 18, which is labeled "Form 18."

OF 1, ex D Item 3. I am not sure what purpose is served by including the summary of exigent circumstances in this form – they will be listed in the required separate motion; they don't inform any action on this form.

OF 5 Page 2, "Transfer of Claim" box. The word "by" appears to be missing from the first sentence: "Check this box if there has been a transfer of any claim against the debtor **by** or to any petitioner."

OF 9I The deadline for filing a complaint to determine dischargeability of debt doesn't appear on the front of the form.

OF 16A The (close) parentheses should be eliminated; their use is archaic.

OF 23 I suggest entitling the form, "Debtor's Certification of Completion of **Post-petition** Instructional Course . . ." to clearly distinguish it from the pre-petition credit counseling requirement. I also suggest removing the "(if any)" notation after "Certificate No." and adding the instruction (attach copy of certificate) after the certificate number blank.