

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF MISSOURI
THOMAS F. EAGLETON U.S. COURTHOUSE
111 SOUTH TENTH STREET - FIFTH FLOOR NORTH
ST. LOUIS, MISSOURI 63102

07-BR-027

BARRY S. SCHERMER

CHIEF UNITED STATES BANKRUPTCY JUDGE

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January 30, 2008

Honorable Laura Taylor Swain
Chair, Bankruptcy Rules Advisory Committee
United States District Court
755 Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Dear Judge Swain

We write in response to the December 7, 2007, Memorandum regarding Request for Comments on Proposed Amendment to Bankruptcy Rule 8002. The proposal would extend the deadline to file a notice of appeal from 10 days to either 14 or 30 days. In our view, the 10-day deadline should remain in place. While the proposed 14-day deadline may be workable, we oppose extending the deadline to 30 days.

The Memorandum references the rationale behind extending the deadline to 30 days as creating a consistency between the Federal Rules of Civil Procedure and the Bankruptcy Rules. The Memorandum suggests the proposed change would also eliminate a perceived trap for the "unwary" practitioner who is not familiar with the Bankruptcy Rules and mistakenly believes a 30-day deadline for filing a notice of appeal in a bankruptcy case already exists. It is our opinion that this proposed change (1) creates an uncertainty and unnecessary delay that can prejudice parties who are not involved in the bankruptcy appeal, (2) will set an even greater trap for the "unwary" practitioner, and (3) does not remedy any real problem.

Certainty in financial transactions is central to the work that a bankruptcy court provides to the parties and the wider community. Prior to the debtor's filing of a bankruptcy petition, multiple creditors await payment of debts. Once a bankruptcy case is commenced, those multiple parties look to the bankruptcy court for resolution to many matters involving the debtor, including claims, whether they will remain employed, etc. Many bankruptcy cases involve sales of assets and other financial transactions that are subject to court approval. These transactions are usually critical to the successful restructuring of the debtor's business or the liquidation of the debtor's assets. The transactions may be lost if there are too much uncertainty and delay in the approval process. Crucial decisions need to be made in a short time-frame in bankruptcy cases so that the parties can move forward with their lives and businesses while recovering as much as

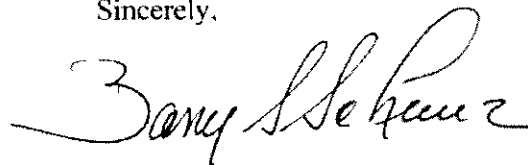
they possibly can through the bankruptcy process. Any uncertainty in the decisions reached in bankruptcy case can, and will likely, lead to the disruption of the debtor's life and/or business along with the lives of the debtor's employees and the creditors' businesses. Establishing a 30-day appeal deadline would create this uncertainty and jeopardize all parties' interests in the case.

If an attorney is inexperienced in bankruptcy matters, the attorney will likely consult the Bankruptcy Rules extensively. The attorney can easily see that the time for filing an appeal is 10 days. This shortened period is plain to see and may even impress upon the attorney the need for quick action in the appellate process. This need for quick action is due to factors that include mootness of the appeal. A bankruptcy case is typically a multifaceted proceeding in which crucial decisions will be quickly made by the parties and the Court. Once a plan of reorganization is confirmed in a Chapter 11 case, for example, it typically becomes "effective" and significant assets are distributed and other actions are taken in a short time-frame. This can and does frequently moot a pending appeal. An inexperienced bankruptcy practitioner can clearly read the time deadline for filing a notice of appeal. That same practitioner, however, may not be aware of the unwritten necessity of quickly filing an appeal, and, if necessary, obtaining a stay of the order being appealed. Should the deadline for filing a notice of appeal be extended to 30 days in bankruptcy cases, the truly unwary practitioner could have his or her appeal mooted precisely because he or she followed the revised rule.

Extension of the deadline to file a notice of appeal does not remedy any real problem. There simply are not very many "unwary" practitioners remaining in the bankruptcy courts since BAPCPA went into effect. The Bankruptcy Code changes made the bankruptcy process much more complex and full of new traps for bankruptcy counsel. Most inexperienced counsel simply ceased doing bankruptcy cases as a result. Bankruptcy also has its own set of rules that can easily be consulted and are not easy to confuse with the Federal Rules of Civil Procedure. Finally, a party can request, and a court can extend, for cause shown, the 10-day time period for filing a notice of appeal under the current rules.

In summary, the desire for uniformity does not outweigh the very real harm that can befall the parties to a bankruptcy case if the appeal deadline is extended. Further, the desire to protect the "unwary" practitioner is, at best, unnecessary, and, at worst, counterproductive. Therefore, the deadline to file a notice of appeal should not be extended.

Sincerely,

A handwritten signature in cursive script that reads "Barry S. Schermer". The signature is written in black ink and is positioned above the printed name and title.

Barry S. Schermer
Chief Judge

Kathy A. Surratt - States

Judge Kathy A. Surratt-States

Charles E. Rendlen III

Judge Charles E. Rendlen, III

David P. McDonald

Judge David P. McDonald

Dana C. McWay

Dana C. McWay, Clerk of Court