

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

Philip H. Brandt
US Bankruptcy Judge

United States Courthouse
700 Stewart Street
Suite 8135
Seattle, Washington 98101-1271
206 370 5320
www.wawb.uscourts.gov

11 February 2008

Hon. 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

Re: Comments on Proposed Amendments to Federal Rules
of Bankruptcy Procedure

Dear Judge Swain:

I have been a bankruptcy judge since 1991, served as chief judge of my district for five years, and as a member of the Ninth Circuit Bankruptcy Appellate Panel for approximately ten, the last two as its chief judge.

Comments Regarding Proposed Amendments to:

A. Rules 7052 and 7058:

Substitute "means" for "shall be read as a reference to"

B. Form B27 (official Form 27):

Paragraph two should address the possibility that the debt being reaffirmed is unsecured but alleged to be nondischargeable. Perhaps the language proposed in the draft form could be paragraph 2(a), and an additional paragraph 2(b) added along the lines of: "if the debt to be reaffirmed is alleged to be nondischargeable, attach a sworn statement setting forth the factual basis of the debt and of the claim of nondischargeability."

C. Rule 9006:

Proposed sub-paragraph (a)(4)(B) would eliminate "drop-box" filings, and would advantage electronic filers over debtors

and other parties representing themselves, and over attorneys who practice infrequently in bankruptcy court and are not electronic filers. I urge the committee to delete the distinction, and simply say that the time period "ends at midnight in the court's time zone."

D. Rule 8002:

I urge that the 10-day period not be extended. Many significant bankruptcy orders, including confirmations of chapter 11 plans, financing orders enabling the operation and ultimate reorganization of businesses (often employing hundreds or thousands of individuals), and sale orders, involve large amounts of money (both in absolute terms, in major chapter 11 cases, and relative to the enterprises in question in other cases). Those orders typically do not become effective until a day or two after the running of the appeal period. Extending the time to appeal will have significant adverse economic effects upon debtors, their employees and communities, and creditors: enterprises must continue to be financed until the effective date either with borrowed money or with funds which would otherwise go to creditors. The cost of surviving 14 days will inevitably be greater than the cost of 10 days, and some enterprises won't make it, and some beneficial transactions will not be pursued because of the additional cost.

Additionally, bankruptcy cases are frequently quite complex, and there are a variety of orders which if appealed affect many subsequent proceedings. Increasing by 40% the time which must elapse before further action can be predicated on the finality of an appealable order increases the period of uncertainty, may significantly impact other aspects of the case, and will also increase costs.

In short, the time value of money is a major factor in bankruptcy, and particularly reorganization cases, and the shorter appeal period helps to preserve value for creditors. There is no compelling reason to reduce the appeal period. Since the time for appeal is jurisdictional and is of such significance, there is no good reason for a practitioner or litigant not to verify, every time out, what the deadline is.

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E. Rule 9023

Whether or not the 10-day appeal period is retained, Rule 9023 needs revision to provide that the time for motions (and sua sponte new trial orders) under Rule 59 of the Federal Rules of Civil Procedure expires on or before the time for filing a notice of appeal. If the proposed changes to the Rule 59 become effective, Rule 9023 in its present form will automatically incorporate those changes. Rule 59 motions could then be filed (and orders entered) 30 days after entry of judgment, after the time for appeal has expired. This anomalous situation will provide numerous (and perhaps endless) opportunities for mischief.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'PHB' followed by a stylized flourish.

Philip H. Brandt
U.S. Bankruptcy Judge

cc: Peter G. McCabe, Secretary