



## BUSINESS LAW SECTION

The State Bar of California

07-BR-032

February 14, 2008

Submitted electronically

Advisory Committee on Bankruptcy Rules  
c/o Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

Re: Comment on FRBP 8002 Time to File a Notice of Appeal in a Bankruptcy Case

To the Members of the Advisory Committee:

The Insolvency Law Committee of the Business Law Section of the State Bar of California ("ILC") appreciates the opportunity to comment on the proposed amendment to the Federal Rules of Bankruptcy Procedure ("FRBP"), Rule 8002, regarding the Time for Filing Notice of Appeal. The ILC seeks to promote predictability, efficiency, and consistency in the administration of the federal and California laws governing insolvency and the rights and duties of creditors and debtors. As explained more fully below, the ILC is made up of bankruptcy attorneys throughout California representing a broad cross-section of diverse disciplines and practices.

The Advisory Committee on Bankruptcy Rules ("Rules Committee") has requested input from the bar as to whether a proposed extension of the deadline for filing a notice of appeal from the existing 10 days to 14 days and possibly to 30 days would cause material disruption in bankruptcy practice. The ILC has reviewed the proposal and unanimously opposes it. The ILC adopts the American Bar Association recommendations and reasoning related to this proposal. The ILC concurs unanimously with the recommendations and reasoning set forth by the American Bar Association and urges the Rules Committee to refrain from making changes to Rule 8002.

The Advisory Committee Note to Rule 8002 sets forth the reason for the 10-day time period for filing an appeal from an order of the bankruptcy court: "The shortened time is specified in order to obtain prompt appellate review, often important to the administration of a case under the [Bankruptcy] Code." The Advisory Committee Note recognizes that in bankruptcy practice, particularly chapter 11 practice, the courts not only adjudicate commercial disputes, but also supervise, and must approve on an on-going basis, significant activities in the debtor's operations during the case, such as

approving the borrowing of money to fund operations and authorizing the use of cash collateral, dealing with violations of the automatic stay, requiring the turnover of property, authorizing the assumption or rejection of executory contracts or leases, authorizing the payment of administrative claims, settling disputes, selling assets outside the ordinary course of business, and liquidating a business in an efficient manner. Lengthening the time for appeal from these actions in supervising the ongoing operations of the debtor will inject uncertainty and delay into what is already a highly complex and managed process to preserve the debtor as an ongoing operation post-petition. In addition, the 10-day rule, which applied under the Bankruptcy Act of 1898 and has continued under the current Bankruptcy Code, has worked well for over a century; it does not need to be changed.

The ILC evaluates and advocates changes in federal and state statutes and regulations affecting creditors and debtors; sponsors a broad variety of educational programs in cooperation with the State Bar of California ("State Bar") and local bar associations; and prepares articles on current developments and practice aides to assist practitioners.

The ILC draws its 25 members from attorneys throughout California representing a broad cross-section of the diverse disciplines and practices (corporate, commercial, consumer, large firm, small firm, governmental agency, in-house) with expertise and experience in issues of general concern in insolvency law.

The ILC coordinates its activities with the Business Law Section, and other sections of the State Bar and, when appropriate, other national, state and local bar associations and professional organizations, on issues of related interest.

**Please note that the views and positions set forth in this letter are only those of the ILC. As such, they have not been adopted by the State Bar's Board of Governors, the State Bar's overall membership or the overall membership of the Business Law Section, and are not to be construed as representing the position of the State Bar of California.**

**Membership in the Business Law Section, and on the ILC, is voluntary and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources. There are currently more than 8,800 members of the Business Law Section.**

Advisory Committee on Bankruptcy Rules  
February 14, 2008  
Page 3

Once again, we thank you for the opportunity to comment on this proposal, and please feel free to contact us if you have any questions regarding this comment. Questions regarding this letter should be directed to me at 916-449-1441 or at [donna@parkinsonphinney.com](mailto:donna@parkinsonphinney.com).

Sincerely,



Donna T. Parkinson, Esq.  
Chair, The Insolvency Law Committee  
of the Business Law Section of the  
State Bar of California

cc: Steven K. Hazen, Esq.  
Professor Mary Jo Wiggins  
Paul J. Pascuzzi, Esq.  
Mark Porter, Esq.  
Lisa Fenning, Esq.