

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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TO: Hon. David F. Levi, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Thomas S. Zilly, Chair
Advisory Committee on Bankruptcy Rules

DATE: November 30, 2006

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on September 14-15, 2006, in Seattle, Washington. The Committee considered a number of issues as more fully set out in the draft of the minutes of that meeting which are attached to this report.

II. Action Items

- A. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 7052 and 9021, and Preliminary Draft of Proposed New Bankruptcy Rule 7058.

The Advisory Committee recommends that the Standing Committee approve the following draft of proposed amendments and additions to the Bankruptcy Rules for publication for comment.

1. *Synopsis of Preliminary Draft of Proposed New Rules and Amendments to Bankruptcy Rules.*

The following amendments are recommended as a package of amendments to implement changes to the Bankruptcy Rules regarding the application of the "separate document"

requirement for judgments. In 2002, Rule 58 F. R. Civ. P. was amended to provide that if the court did not issue a judgment on a separate document, then appeal of the judgment must be taken not later than 150 days after the docketing of the judgment or order being appealed. Bankruptcy Rules 9021 and 5003 have governed the entry of judgments in the bankruptcy case as well as in adversary proceedings and contested matters. The amendment to Civil Rule 58 provided an impetus for the Bankruptcy Rules Committee to study the issue anew. The potential for a 150 day appeal period, particularly in matters other than adversary proceedings which closely parallel civil actions, could be very disruptive in bankruptcy cases, so the Advisory Committee concluded that the rules governing adversary proceedings should explicitly adopt Civil Rule 58 through the promulgation of new Bankruptcy Rule 7058. The amendments to Rule 7052 makes explicit that the entry of judgment in adversary proceedings means the entry of judgment under the Bankruptcy Rules, and Rule 9021 was amended to restrict its reach as to judgments to matters other than adversary proceedings.

- a. **Rule 7052** is amended to clarify that entry of judgment in an adversary proceeding means the entry of a judgment or order under the Bankruptcy Rules rather than under the Federal Rules of Civil Procedure.
 - b. **Rule 7058** is new, and it makes Rule 58 of the Federal Rules of Civil Procedure applicable in adversary proceedings.
 - c. **Rule 9021** is amended in connection with the addition of Rule 7058. Since that rule governs in adversary proceedings, Rule 9021 no longer needs to make Rule 58 of the Federal Rules of Civil Procedure applicable in those actions. This amendment and the addition of Rule 7058 results in the explicit adoption of the separate document requirement for judgments in adversary proceedings, while the effectiveness of an order or judgment in other actions within the case is determined under Rule 5003 which does not include the separate document requirement.
2. *Text of Preliminary Draft of Proposed New Rules and Amendments to Bankruptcy Rules and Official Forms.*

RULE 7052. Findings by the Court

- 1 Rule 52 F. R. Civ. P. applies in adversary proceedings. The
- 2 reference in Rule 52 F. R. Civ. P. to the entry of judgment under
- 3 Rule 58 F. R. Civ. P. means the entry of a judgment or order under
- 4 Rule 5003(a).

COMMITTEE NOTE

The rule is amended to clarify that the reference in Rule 52 F. R. Civ. P. to Rule 58 F. R. Civ. P. and its provisions is construed as a reference to the entry of a judgment or order under Rule 5003(a).

RULE 7058. Entry of Judgment

1 Rule 58 F. R. Civ. P. applies in adversary proceedings. The
2 reference in Rule 58 F. R. Civ. P. to the civil docket means the
3 docket maintained by the clerk under Rule 5003(a).

COMMITTEE NOTE

This rule makes Rule 58 F. R. Civ. P. applicable in adversary proceedings and is added in connection with the amendments to Rule 9021.

Rule 9021. Entry of Judgment

1 ~~Except as otherwise provided herein, Rule 58 F. R. Civ. P.~~
2 ~~applies in cases under the Code. Every judgment entered in an~~
3 ~~adversary proceeding or contested matter shall be set forth on a~~
4 ~~separate document. A judgment or order is effective when entered~~
5 ~~as provided in under Rule 5003. The reference in Rule 58 F. R.~~
6 ~~Civ. P. to Rule 79(a) F. R. Civ. P. shall be read as a reference to~~
7 ~~Rule 5003 of these rules.~~

COMMITTEE NOTE

The rule is amended in connection with the amendment that adds Rule 7058. The entry of judgment in adversary proceedings is governed by Rule 7058, and the entry of a judgment or order in all other proceedings is governed by this rule.

III. Information Items

A. Publication of Proposed Amendments to Bankruptcy Rules and Official Forms

At the June 2006 meeting, the Standing Committee authorized the publication of a preliminary draft of amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009 and the preliminary draft of proposed new Bankruptcy Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, 5012, and 6011. The Standing Committee also authorized the publication of proposed amendments to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 8, 9, 10, 16A, 18, 19A, 19B, 21, 22A, 22B, 22C, 23, and 24; and proposed new Official Forms 25A, 25B, 25C, and 26, and Exhibit D to Official Form 1. The deadline for the submission of comments on these proposals is February 15, 2007. Thus far, we have received six comments on the proposals. A public hearing on the proposals is scheduled for January 22, 2007.

The Advisory Committee will consider all of the comments submitted on these proposals, whether in writing, or at the public hearing, during its March, 2007 meeting. The Advisory Committee anticipates that it will present these amendments, with appropriate changes, if any, to the Standing Committee at its June, 2007 meeting for approval and transmittal to the Judicial Conference.

B. Time Computation Project.

The Advisory Committee has considered the drafts of the proposed template for time computation under the Bankruptcy Rules. The Committee, through an ad hoc subcommittee, is also conducting a review of the other Bankruptcy Rules to implement the recommendations of the Time Computation Committee regarding the adoption of deadlines of less than 30 days being set out in multiples of seven days. The Ad Hoc Subcommittee will be evaluating the rules to determine whether the deadlines set out in the Bankruptcy Rules should follow that standard or whether some of the rules present issues unique to bankruptcy law and practice that justify the retention of the current deadlines that are not set out in multiples of seven days. The Ad Hoc Subcommittee hopes to make its recommendations for amendments to the Bankruptcy Rules to the Advisory Committee

for its consideration at the March, 2007 meeting. To the extent that the Advisory Committee finds that these amendments should be adopted, they will be recommended to the Standing Committee thereafter.

C. Attorney Conduct

At its Seattle meeting in September 2006, the Advisory Committee agreed to revise Official Form 1, the Voluntary Petition, to include a warning under the attorney's signature that would track the language in section 707(b)(4)(D) of the Bankruptcy Code. That section provides that an attorney's signature on the bankruptcy petition constitutes a certification that the attorney has no knowledge, after an inquiry, that the information in the schedules filed with the debtor's petition is incorrect.

The Advisory Committee referred to its Subcommittee on Attorney Conduct and Health Care the task of drafting alternative amendments to Rule 9011 to address the concerns of Congress as expressed in section 319 of BAPCPA. One alternative would make the requirements of section 707(b)(4)(D) generally applicable in all chapters for cases filed by individuals whose debts are primarily consumer debts. The other proposal would incorporate section 707(b)(4)(D) into Rule 9011 only for chapter 7 cases.

The Advisory Committee decided not to amend Rule 9011 to incorporate section 707(b)(4)(C) or the language of section 319 because those standards differ from the current standards in Rule 9011, which parallel the language of Civil Rule 11.

D. Committee Membership

The Chief Justice has appointed two new members of the Advisory Committee. Bankruptcy Judge Kenneth J. Meyers of the Southern District of Illinois, and John Rao, an attorney at the National Consumer Law Center in Boston, were appointed to three-year terms. They replace Bankruptcy Judge James D. Walker, Jr., of the Middle District of Georgia, and K. John Shaffer, an attorney at Stutman, Treister & Glatt, P.C., in Los Angeles, whose terms have expired.

Attachments: Draft of Minutes of the Advisory Committee Meeting of September 13-14, 2006
Bankruptcy Rules Tracking Docket