



Bankruptcy e-Bulletin

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Dear Insolvency Law Committee Constituency List members:

The purpose of this eBulletin is to provide analysis concerning substantial amendments to the Federal Rules of Bankruptcy Procedure and the Official Forms that take effect today. The newly amended rules can be viewed by clicking [HERE](#) and the new forms can be viewed by clicking [HERE](#). The extent to which the amendments may be applied retroactively is addressed at the end of this report.

Amended Rules:

Rule 1007

Amendments to Rule 1007 shorten the time for a debtor in an involuntary case to file the list of creditors that must be included on the bankruptcy schedules filed in the case. Rule 1007(a)(2) now requires the debtor in an involuntary case to file a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H within seven days after entry of the order for relief, rather than within 14 days under current law.

The amendments also give individual debtors in a chapter 7 case additional time to file a statement of completion of the mandatory course in personal financial management. The debtor now must file the statement required by Rule 1007(b)(7) within 60 days after the first date set for the meeting of creditors under § 341 of the Code, rather than within 45 days under current law.

Rule 1014

Amendments to Rule 1014 authorize a court to determine the district in which a case should proceed when multiple petitions – including a Chapter 15 cross-border petition – involving the same debtor are pending in different districts. Previously, Rule 1014(b) did not provide for the district court to make such a determination with respect to petitions seeking recognition under Chapter 15 filed in different districts. A motion for such determination still must be filed in the district in which the first filed petition is pending.

Rule 1015

Amendments to Rule 1015 explicitly recognize a court's authority to consolidate or jointly administer cases when one or more of the petitions – including a cross-border petition under Chapter 15 – is filed by, against, or regarding the same debtor. Current law did not expressly authorize the court to consolidate a Chapter 15 case.

Rule 1018

Amendments to Rule 1018 apply selected provisions from Part VII of the Bankruptcy Rules (i.e., Rules 7001 *et seq.*), governing proceedings contesting an involuntary petition, to proceedings contesting a Chapter 15 cross-border petition for recognition. Those Rules (7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052, 7054, 7056 and 7062) now apply to all proceedings contesting a chapter 15 petition, rather than applying only to a contested petition commencing a case ancillary to a foreign proceeding under current law. Rule 1018 has also been clarified to reflect that the designated Part VII Rules apply only to a contest over an involuntary petitions, rather than to any proceeding merely related to a contested involuntary petition.

Rule 1019

Amendments to Rule 1019 provide a new time period to object to a debtor's claim of exemptions when a case is converted to chapter 7 from chapter 11, 12, or 13. New Rule 1019(2)(B) provides that a new time period to object to a claim of exemption arises when a case is converted to Chapter 7 from Chapter 11, 12 or 13. However, such new time period does not arise if the conversion occurs more than one year after the first order confirming a plan, or if the case was previously pending under Chapter 7 and the objection period had expired in the original

Chapter 7 case.

Rule 4001

The amendments to this rule are technical, and designed to conform to prior amendments to rule 9006(a).

Rule 4001(d) governs motions for approval of various agreements, including to provide adequate protection and to prohibit or condition the use, sale, or lease of property, among others. Under the **current** subdivision (d)(2), unless the Court fixes a different time, objections to such motions may be filed within 15 days of the date the notice of motion is mailed. Under the **revised** rule, objections may be filed **14 days** of the notice. Similarly, subdivision (d)(3) is revised to require that any hearing held on one of the above motions be held on at least a **seven-day** notice to the objector, instead of the current five-day notice requirement.

Rule 4004

Rule 4004 has been amended in several important respects. First, objections to discharge under 11 U.S.C. §727(a)(8) and 727(a)(9) or under §1328(f) (provisions of the Bankruptcy Code establishing time limits on the issuance of discharges in successive bankruptcy cases by the same debtor) are now to be raised by motion rather than by adversary proceeding. Rule 7001(4) was amended to provide that the Part VII rules (applicable in adversary proceedings) do not apply to objections to discharge by motion; Rule 9014 will therefore apply unless otherwise ordered. The reason for channeling these kinds of challenges into contested matters is the belief, as expressed in the Advisory Committee Notes, that "objections to discharge on these grounds typically present issues more easily resolved than other objections to discharge." Second, Rule 4004 directs the bankruptcy court not to grant the debtor a discharge if either a motion or a complaint objecting to discharge has been filed unless that matter or proceeding has been decided in the debtor's favor. It is worth noting here that the deadline for filing an objection to discharge in a Chapter 7 or 13 case is 60 days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a), and the deadline in a Chapter 11 case is the first date set for the hearing on plan confirmation. Third, Rule 4004 directs the court in chapter 11 and 13 cases to withhold the entry of a discharge if the debtor has not filed a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7).

Rule 5009

This rule **currently** governs the closing of Chapter 7, 12 and 13 cases. As **revised**, the old rule remains unchanged, but is designated subdivision (a), while subdivisions (b) and (c) are added. **Subdivision (b)** requires the court clerk to "promptly" notify an individual chapter 7 or 13 debtor who has not filed a statement of completion of a personal financial management course within 45 days after the "first date set" for the meeting of creditors that the case will be closed without a discharge, **unless** the statement is filed within the time specified in rule 1007(c).

Subdivision (c) requires a foreign representative in a foreign proceeding recognized under Section 1517 of the Code to file a final report when the purpose under which the representative was recognized by the court has been completed. The report must describe the nature and results of the representative's activities in the bankruptcy court. The rule further establishes requirements for serving the final report, which are consistent with the requirements in Section 2002(q) for serving notice of the hearing on a chapter 15 petition, and for filing a certificate with the court that notice has been provided. If no objection is filed within 30 days after filing of the certificate, it is presumed that the case has been fully administered.

Rule 5012

This is a new rule. It requires approval of cooperation agreements under Sections 1525 and 1526, concerning the coordination of proceedings, to be obtained by motion. The new rule further establishes content and service requirements for such motion.

Rule 7001

Under the **current** rule, an adversary proceeding must be utilized to object to or seek revocation of a discharge. The **revised** rule creates exceptions to the adversary proceeding requirement, for objections to a discharge under **Sections 727(a)(8)** (where the debtor was granted discharge under chapter 7 or 11 of the Code, or certain sections under the Bankruptcy Act, in a case commenced within eight years before filing of the current petition), **(a)(9)** (where the debtor was granted a discharge within the past six years before the current petition, in a chapter 12 or 13 case, or certain sections

under the Bankruptcy Act, with certain specified exceptions) or **1328(f)** (containing additional exceptions to discharge for debtors who filed prior cases), which objections are now to be made through a motion as set forth above in the discussion of Rule 4004.

Rule 9001

The **current** rule incorporates into the Bankruptcy Rules the definitions in Sections 101, 902, and 1101 of the Bankruptcy Code. The **revised** rule further incorporates into the rules the definitions in Section 1502.

Changes To Official Forms:

Forms 9A (Chapter 7 No Asset Notice of Commencement of Case), 9C (Chapter 7 Asset Notice of Commencement of Case), and 9I (Chapter 13 Notice of Commencement of Case) are amended to conform with the amendments to Rules 4004 and 7001 to provide that proceedings to object to a debtor's discharge under Sections 727(a)(8), (a)(9) and 1328(f) may be commenced by motion.

Forms 20A and 20B (Notices of Motion, Objection and Objections to Claims) have been amended to make technical and conforming corrections by identifying all of the names previously used by the debtor in the last 8 years, and the last four digits of the debtor's social security or tax payer identification number.

Forms 22A (Statement of Current Monthly Income - Chapter 7); 22B (Statement of Current Monthly Income - Chapter 11) and 22C (Statement of Current Monthly Income - Chapter 13) have been amended as follows: Forms 22A (line 8), 22B (line 7) and 22C (line 7) are amended to provide that only one joint filer reports payments made by another for household expenses; Forms 22A (lines 19-20) and 22C (lines 24-25) replace "household size" with "family size" or "number of persons"; and Form 22A is amended to provide that if one joint filer is exempt under Form 22A, the non-exempt joint filer files a separate form.

Form 23 (Debtor's Certification of Completion of Post Petition Instructional Course Concerning Personal Financial Management) has been amended to conform with amendment to Rule 1007(c) to extend the time for filing to 60 days from the date first set for the meeting of creditors.

Retroactivity:

According to the order from the United States Supreme Court approving the below-described amendments to the Federal Rules of Bankruptcy procedure the amendments will apply to all cases commenced on and after December 1, 2010, and to the extent that justice permits, to all pending cases. Please click [HERE](#) to read the Supreme Court's order.

It is commonly assumed that rules are considered procedural (not substantive) and therefore applicable to all pending cases. See Arrowhead Estates Dev. Co. v. United States Trustee (In re Arrowhead Estates Dev. Co), 42 F.3d 1306, 1311 (9th Cir. 1995) ("[w]hile there is often a presumption against retroactive application of new legislation to pending cases, this presumption generally does not apply to rules conferring or withdrawing jurisdiction. Landgraf v. USI Film Prods., 114 S. Ct. 1483 (1994) ('[p]resent law normally governs in such situations because jurisdictional statutes 'speak to the power of the court rather than to the rights or obligations of the parties.' Id. at 1502 (quoting Republic Nat'l Bank v. United States, 113 S. Ct. 554, 565 (1992) (Thomas, J. concurring)); see also Andrus v. Charlestone Stone Prods. Co., 436 U.S. 604 (1978); Additionally, "changes in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity." Landgraf, ,114 S. Ct. at 1502.)"

Other Rules Changes:

Practitioners should be aware that the Federal Rules of Appellate Procedure and the Federal Rules of Civil Procedure have also been amended in ways that may impact bankruptcy cases and adversary proceedings . Click [HERE](#) for a link to the U.S. Courts web page describing such changes.

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Thank you for your continued support of the Committee.

Best regards,

Insolvency Law Committee

The Insolvency Law Committee of the Business Law Section of the California State Bar provides a forum for interested bankruptcy practitioners to act for the benefit of all lawyers in the areas of legislation, education and promoting efficiency of practice. For more information about the Business Law Standing Committees, please see the standing committee's web page:

<http://businesslaw.calbar.ca.gov/StandingCommittees.aspx>

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