

Proposed Federal Bankruptcy Rules and Forms Changes

Effective December 1, 2016

United States Bankruptcy Court, Northern District of Georgia

Proposed Amendments to the Federal Rules

On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Appellate, Civil, Criminal, and Bankruptcy Procedures which are scheduled to take effect on December 1, 2016.

The following is a summary of the proposed changes to the Rules and Forms.

Disclaimer: This packet is not intended to be all encompassing and should not be considered legal advice. All parties acting before the court should perform any and all research prior to filing.

Proposed Federal Rule Changes

The following Rules are scheduled to change:

- ▶ 1010
- ▶ 1011
- ▶ 1012*
- ▶ 2002
- ▶ 3002.1
- ▶ 7008
- ▶ 7012
- ▶ 7016
- ▶ 9006
- ▶ 9027
- ▶ 9033

Committee Notes on each proposed change are further detailed on the following pages.

*Rule 1012 is a new rule.

Rule 1010. Service of Involuntary Petition and Summons

Subdivision (a) of this rule is amended to remove provisions regarding the issuance of a summons for service in certain chapter 15 proceedings. The requirements for notice and service in chapter 15 proceedings are found in Rule 2002(q).

Rule 1011. Responsive Pleading or Motion in Involuntary Cases

This rule is amended to remove provisions regarding chapter 15 proceedings. The requirements for responses to a petition for recognition of a foreign proceeding are found in Rule 1012.

Rule 1012. Responsive Pleading in Cross-Border Cases

This rule is added to govern responses to petitions for recognition in cross-border cases. It incorporates provisions formerly found in Rule 1011. Subdivision (a) provides that the debtor or a party in interest may contest the petition. Subdivision (b) provides for presentation of responses no later than 7 days before the hearing on the petition, unless the court directs otherwise. Subdivision (c) governs the filing of corporate ownership statements by entities responding to the petition.

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

Subdivision (q) is amended to clarify the procedures for giving notice in cross-border proceedings. The amended rule provides, in keeping with Code § 1517(c), for the court to schedule a hearing to be held promptly on the petition for recognition of a foreign proceeding. The amended rule contemplates that a hearing on a request for provisional relief may sometimes overlap substantially with the merits of the petition for recognition. In that case, the court may choose to consolidate the hearing on the request for provisional relief with the hearing on the petition for recognition, see Rules 1018 and 7065, and accordingly shorten the usual 21-day notice period.

Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

The rule is amended to clarify three matters:

(1) it applies whenever a debtor will make ongoing mortgage payments during the chapter 13 case, regardless of whether a prepetition default is being cured;

(2) it applies regardless of whether it is the debtor or the trustee who will make ongoing mortgage payments during the case; and

(3) it generally ceases to apply when an order granting relief from the stay becomes effective with respect to the debtor's principal residence. Debtors and trustees typically do not make payments on mortgages after the stay relief is granted, so there is generally no need for the holder of the claim to continue to provide the notices required by this rule. Sometimes, however, there may be reasons for the debtor to continue receiving mortgage information after stay relief. For example, the debtor may intend to seek a mortgage modification or to cure the default. When the court determines that the debtor has a need for the information required by this rule, the court is authorized to order that the notice obligations remain in effect or be reinstated after the relief from the stay is granted.

Rule 7008. General Rules of Pleading

The rule is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. Rule 7012(b) has been amended to require a similar statement in a responsive pleading. The bankruptcy judge will then determine the appropriate course of proceedings under Rule 7016.

Rule 7012. Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings

Subdivision (b) is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. The amended rule also removes the provision requiring express consent before the entry of final orders and judgments in non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157 (b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. This amendment complements the requirements of amended Rule 7008(a). The bankruptcy judge's subsequent determination of the appropriate course of the proceedings, including whether to enter final orders and judgments or to issue proposed findings of fact and conclusions of law, is a pretrial matter now provided for in amended Rule 7016.

Rule 7016. Pre-trial Procedures

This rule is amended to create a new subdivision (b) that provides for the bankruptcy court to enter final orders and judgment, issue proposed findings and conclusions, or take some other action in a proceeding. The rule leaves the decision as to the appropriate course of proceedings to the bankruptcy court. The court's decision will be informed by the parties' statements, required under Rules 7008(a), 7012(b), and 9027(a) and (e), regarding consent to the entry of final orders and judgment. If the bankruptcy court chooses to issue proposed findings of fact and conclusions of law, Rule 9033 applies.

Rule 9006. Computing and Extending Time: Time for Motion Papers

Subdivision (f) is amended to remove service by electronic means under Civil Rule 5(b)(2)(E) from the modes of service that allow three (3) added days to act after being served.

Rule 9006(f) and Civil Rule 6(d) contain similar provisions providing additional time for actions after being served by mail or by certain modes of service that are identified by reference to Civil Rule 5(b)(2).

Rule 9006(f)—like Civil Rule 6(d)—is amended to remove the reference to service by electronic means under Rule 5(b)(2)(E). The amendment also adds clarifying parentheticals identifying the forms of service under Rule 5(b)(2) for which three days will still be added.

Civil Rule 5(b)—made applicable in bankruptcy proceedings by Rules 7005 and 9014(b)—was amended in 2001 to allow service by electronic means with the consent of the person served. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow three added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and widespread skill in using electronic transmission.

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Rule 9006 Computing and Extending Time: Time for Motion Papers (Continued)

Many rules have been changed to ease the task of computing time by adopting 7-, 14-, 21-, and 28-day periods that allow “day-of-the-week” counting. Adding three days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Electronic service after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond. Extensions of time may be warranted to prevent prejudice.

Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow three added days means that the three added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing, for example, does not count as consent to service “by any other means” of delivery under subparagraph (F).

Subdivision (f) is also amended to conform to a corresponding amendment of Civil Rule 6(d). The amendment clarifies that only the party that is served by mail or under the specified provisions of Civil Rule 5—and not the party making service—is permitted to add three days to any prescribed period for taking action after service is made.

Rule 9027. Removal

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether or hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.

Rule 9033. Proposed Findings of Fact and Conclusions of Law

Subdivision (a) is amended to delete language limiting this provision to non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. If the bankruptcy court decides, pursuant to Rule 7016, that it is appropriate to issue proposed findings of fact and conclusions of law in a proceeding, this rule governs the subsequent procedures.

Forms

Only three forms are being slightly modified for use beginning December 1, 2016.



Form Changes

Form 420A Notice of [Motion To] [Objection To]
Form 420B Notice of Objection to Claim

The form numbers are updated to comport with the form numbering style developed as part of the Forms Modernization project. The forms are also amended to change the phrase “mail” to “send” to reflect the fact that there are various methods of providing documents to other parties.

Form Changes

Form 410S2 Notice of Postpetition Mortgage Fees, Expenses, and Charges

Form 410S2, *Notice of Postpetition Mortgage Fees, Expenses, and Charges*, is amended in the instructions in Part 1 to clarify how to report previously approved fees, expenses, or charges. The following language is added: “If the court has previously approved an amount, indicate that approval in parentheses after the date the amount was incurred.” This amended language replaces the prior instruction not to report any amounts previously ruled on by the bankruptcy court.

That's it for now!

For more information, and a complete copy of the new proposed Rules and Forms, please visit the US Courts website at: (Rules appear in the Amendments Adopted by the Supreme court section near the bottom of the page, and Forms are directly above that section.)

<http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>