Bankruptcy Court News
November 2016

Amendments to the Federal Rules of Bankruptcy Procedure (12/1/2016)

- **"Stern" Amendments: Rules 7008, 7012, 7016, 9027, 9033.** The amended rules remove the requirement to state whether a proceeding is core or non-core. Following the Supreme Court rulings in *Stern v. Marshall*, 131 S. Ct. 2594 (2011) and *Wellness Int'l Network, Ltd. V. Sharif*, 135 S. Ct. 1932 (2015), pleadings must only state whether there is consent to entry of final orders or a judgment by the bankruptcy court. Rule 7016 is amended to provide that the bankruptcy court will decide whether to (1) hear and determine the proceeding, (2) issue proposed findings and conclusions, or (3) take some other action.

- **Additional Time After Service by Mail: Rule 9006.** Similar to a change to Fed. R. Civ. P. 6, the additional 3 days in computing time will continue to apply to service by mail, by leaving a document with the clerk, and by delivery by other means, but will no longer apply to documents served by electronic means. Note: Most deadlines set by local rules are calculated by the date of filing rather than the date of service, so the 3 additional days typically have not been a factor in many filings.

- **Notice Requirements Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence: Rule 3002.1.** The amendment clarifies that the notice requirements (payment change, postpetition fees and expenses, final cure payment) apply whether the contractual payments on the debtor's home mortgage are made by the trustee or by the debtor. The amended rule also provides that the notice requirements cease to apply when an order terminates or annuls the automatic stay.

- **Other Rule Amendments.** Rules 1010, 1011, and 2002 are also being amended and there is a new Rule 1012. These concern involuntary and cross-border cases.

Amended Form 410S2 (12/1/2016)

- **Amended Form 410S2 - Notice of Postpetition Mortgage Fees, Expenses, and Charges.** This form is amended 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.

Filing Fee Increases (12/1/2016)

- **Miscellaneous Fees.** Inflationary adjustments are being made to various fees. A table is attached.

Reminder – New Appeal Forms and Rules Became Effective 12/1/2015

- **Notice of Appeal and Statement of Election – Official Form 417A.** This form is mandatory when filing an appeal. Notably, the form includes a check box for electing the district court to hear the appeal. This replaces the previous procedure requiring the filing of a separate statement.

- **Optional Appellee Statement of Election to Proceed in District Court – Official Form 417B.** This form is mandatory when the appellee wishes to have the Bankruptcy Appellate Panel (BAP) transfer the appeal to the district court.

- **Amendments to Part VIII of the Federal Rules Became Effective 12/1/2015.** Significant changes were made in 2015 to the entire set of bankruptcy rules affecting appeals. Please review these rules if contemplating an appeal.

Chapter 13 Plan – National Form

- **Proposed New Form Plan – December 1, 2017.** It appears that a national form plan may be adopted to become effective next year. However, the latest version of the proposed amendment to Rule 3015 permits local form plans so long as they comply with certain requirements. Presently, the court is considering revising the local form plan to adopt the format of the national plan but primarily using the existing local plan provisions. Notice will be given when a draft plan is ready for comment.

- **Service of Plan by Debtor.** Currently, the court serves the plan through the Bankruptcy Noticing Center (BNC) if filed at the same time as the petition. As announced more than a year ago, as a cost containment measure by the judiciary, the Clerk's Office intends to shift the responsibility to the debtor to serve the plan in all instances. A further announcement will be made when this nears implementation.

CM/ECF

- **NextGen: Projected Implementation – Mid to Late 2017.** Nationwide, the bankruptcy courts, as well as the district and appellate courts, are moving to the next generation of electronic filing – NextGen CM/ECF. To date the JAVA-based system has been implemented in the Ninth Circuit districts of Alaska, California Southern, and Oregon. Latest plans project the implementation in the Hawaii bankruptcy court in the second half of 2017. There will be many new features in NextGen but it generally will have the same look and feel of the current CM/ECF system.

- **"Central Sign-On".** In planning the nationwide rollout of NextGen, the most common suggestion from the bar was being able to use a single login and password in different districts, and in different courts within the same district. This has resulted in a change whereby an individual's PACER login and password, previously used only to view

documents, will also be used for filing documents in NextGen courts. An attorney must still be granted access to file documents by the particular court, but the attorney will use the same PACER login and password in every NextGen court. This will require filers to perform a one-time update of their PACER login at the PACER Service Center website.

- **Updated Filer Registration.** In anticipation of NextGen implementation, the court will begin requesting filers to update their PACER login and use a new registration form for electronic filing. The registration update is also intended to clear the system of attorneys and creditors who no longer file in this court but more importantly, to remind filers that use of the "/s/" signature for the debtor or a third party requires obtaining the original signature on a paper document **before** the digital version of that document is filed electronically. It appears that some attorneys may not always be in possession of the originally signed document at the time the document is filed online. The registration update is intended to emphasize this requirement.

SEALED AND REDACTED DOCUMENTS

- **Procedure Memo.** A document reviewing, and hopefully clarifying, the court's procedures for filing sealed and redacted documents will be posted shortly at the court's website.

Effective December 1, 2016

Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930)

Item No.	Description	Current Fee	Approved New Fee
2	For exemplification of any document	$21	$22
3	For reproduction of an audio recording of a court proceeding	$30	$31
4	For filing an amendment to the debtor's schedule of creditors, lists of creditors, or mailing list…	$30	$31
5	For conducting a search of the bankruptcy court records…	$30	$31
7	For filing any document that is not related to a pending case or proceeding . . .	$46	$47
19	For filing the following motions. . . • To terminate, annul, modify or condition the automatic stay; • To compel the abandonment of property of the estate. . . • To withdraw the reference of a case or proceeding. . . • To sell property of the estate free and clear of liens under [11 U.S.C. § 363(f)].	$176	$181