

## Interim Update to E-filers

November 25, 2014

Greetings Everyone!

Listed below you will find some updates regarding electronic filing and new rules that become effective December 1. If you have any questions once you review this information, please don't hesitate to contact the ECF Training Department.

**NOTE: Our Contact Information is on the last page!!!** Thanks

**Changes Coming December 1 (listed in order of impact on daily case management):**

### **\*\*\*\*\*IMPORTANT NOTE\*\*\*\*\***

The events that you previously selected for the Chapter 7, 11 and 13 Means Test and Current Monthly Income events above **HAVE BEEN DEACTIVATED**, starting December 1, 2014 the new events for new cases or if your are curing a deficient case filed prior to December 1, 2014 will need to be electronically **FILED SEPARATELY** using the new events that are listed below. **YOU CAN NO LONGER BUNDLE THESE MEANS TEST FORMS IN THE VOLUNTARY PETITION PACKET!**

**REMINDER:** Make sure you have the current update of your software, Attorneys are strongly encouraged to check with their providers to ensure the updates have been made and that you understand the specific effect of the December 1, changes in your particular software.

**NOTE: The Statement of Exemption from the Presumption of Abuse Form 22A-1-Supp in some instances will be allowed to be submitted with the Means Test Calculation form or the Current Monthly Income form- See instructions on the forms.**

Chapter 7 Means Test event and the Chapter 11 and 13 Current Monthly Income related **new events**:

Chapter 7:

- Chapter 7 Statement of Current Monthly Income Form 22A-1
- Statement of Exemption from Presumption of Abuse Form 22A-1Supp
- Chapter 7 Means Test Calculation Form 22A-2

#### **Chapter 11:**

- Chapter 11 Statement of Current Monthly Income Form 22B

#### **Chapter 13:**

- Chapter 13 Statement of Current Monthly Income & Commitment Period Form 22C-1
- Chapter 13 Calculation of Current Monthly Disposable Income Form 22C-2

**[These new events will be available by 8 a.m. MST on December 1.](#)**

Additional modified or new events and fees effective December 1<sup>st</sup> are:

**Motion to Redact - along with a new \$25.00 Filing Fee** (Filing a Motion to Redact Filing per Rule 9037(a). The Conference also endorsed a new exception to the reopening fee for a closed bankruptcy case to clarify that the reopening fee does not apply if redaction is the only purpose for reopening the case.)

**NOTE: Starting December 1, 2014 you will be required to use the appropriate new Motion to Redact event, if you use the incorrect event you are still required to pay the filing fee and will be contacted by the Clerk's Office or the appropriate Notice of Filing Fee Notice will be issued.**

#### **Appeal related new events.**

- Notice of Appeal and Statement of Election
- Appellee Statement of Election
- Statement of Evidence in Lieu of Transcript
- Response to Statement of Evidence in Lieu of Transcript
- Certification of No Transcript Ordered
- Agreed Statement in Lieu of Record on Appeal

**Fee increase for direct appeals** to the Circuit Court of Appeals will increase from \$157 to \$207, as will the fee for direct cross appeals.

Effective December 1, 2014, there are several Federal Rules of Bankruptcy Procedure changes, some of which have corresponding new or revised forms. We advise that you thoroughly review the rule and form changes at:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>.

New 12/1/14 Forms Required and Summary of 2014 Changes to Federal Rules of Bankruptcy Procedure: (See PDF Attached)

### **Important CM/ECF Contact Information**

#### **CM/ECF HELP DESK NUMBER - 720-904-7450**

Help Desk members will answer the phone or will return the call if a message is left. Use this phone number when you have procedural questions regarding e-filing, need help e-filing documents, or have questions regarding ECF training.

#### **TRAINING TEAM E-MAIL ADDRESS - [cobml\\_training@cob.uscourts.gov](mailto:cobml_training@cob.uscourts.gov)**

Use this e-mail address when you have procedural questions regarding e-filing, need help e-filing documents, have questions regarding ECF training, or you want to change information in your ECF Account (i.e. e-mail address, master address record, etc.)

#### **QUALITY ASSURANCE TEAM E-MAIL ADDRESS -**

**[cob\\_qa@cob.uscourts.gov](mailto:cob_qa@cob.uscourts.gov)**

Use this e-mail address when you have made a mistake during the e-filing of your document and want the QA Team to fix it for you.

#### **YOUR ECF TRAINING TEAM/HELP DESK MEMBERS:**

Rich Roberts and TJ Vincent

Backups: Meghan Smotts, Theresa Gardner

## **Summary of 2014 Changes to Federal Rules of Bankruptcy Procedure**

### **Rule 1014(b)**

Rule 1014(b) addresses the procedure when petitions involving the same or related debtors are filed in different courts. The amendment to Rule 1014(b) provides that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending, and would expand the list of persons entitled to receive notice of a motion in the first court for a determination of where the related cases should proceed.

### **Rule 7004(e)**

The amendment to Rule 7004(e) alters the period of time during which service of the summons and complaint must be made, reducing the period from 14 days to 7 days after issuance of the summons. Because Rule 7012 provides that the defendant's time to answer the complaint is calculated from the date the summons is issued, a lengthy delay between issuance and service of the summons may unduly shorten the defendant's time to respond. Therefore, this amendment seeks to ensure prompt service.

Courts should review any local forms or other court information that references time periods to ensure that they are consistent with the changes to Rule 7004.

### **Rules 7008(b) and 7054**

The proposed amendments to these rules would change the procedure for seeking attorney's fees in bankruptcy proceedings, bringing the Bankruptcy Rules in closer alignment with the Civil Rules.

- Rule 7008(b), which currently addresses attorney's fees, will be deleted.
- Rule 7054 will include the procedures for seeking an award of attorney's fees, unless the governing substantive law requires the fees to be provided at trial as an element of damages.

### **Rules Governing Appeals - Rules 8001-8028**

- The amendments to Part 8 of the Bankruptcy Rules govern appeals to district courts and bankruptcy appellate panels.
- The purpose of the amendments is to: (1) bring the bankruptcy appellate rules into closer alignment with the Federal Rules of Appellate Procedure; (2) incorporate a presumption favoring electronic transmission, filing and service of court documents; and (3) adopt a clearer and simpler style.
- Some highlights of the revised rules related to appeals include:

- Rule 8003 requires the clerk to serve the notice of appeal instead of providing notice of the filing of the notice of appeal. The Notice of Electronic Filing (NEF) will suffice as notice except when pro se parties are involved.
- Rule 8003(d)(1) requires the clerk to transmit the notice of appeal promptly to the district court or BAP. The Committee note makes clear that this transmission should no longer be delayed until the record is complete. Each district should determine how best to transmit the notice of appeal within the district.
- Rule 8005(a) eliminates the requirement that a separate document be filed when a party to an appeal opts out of the BAP. (Also see discussion of Official Form 17 below).
- Rule 8009
  - ▶ addresses transcripts, when a transcript is or is not ordered, and allows an appellant to file a statement of in lieu of transcript, when a transcript is unavailable. Courts may want to consider a local rule defining the circumstances under which a transcript would be considered “unavailable.”
  - ▶ permits the parties to file an agreed statement as to the record on appeal (in lieu of the record on appeal).
  - ▶ if a sealed document is designated as part of the record on appeal, the party making the designation must file a motion requesting that the appellate court accept the sealed document. The Committee Note states that the bankruptcy court may not transmit the designated sealed document without an order from the appellate court.
- Rule 8010 requires that if a party moves in the district, BAP, or court of appeals for any of the following: leave to appeal; dismissal; a stay pending appeal; approval of a supersedeas bond, or additional security on a bond or undertaking on appeal; or any other intermediate order, the bankruptcy clerk must transmit to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal or a notice that those parts are available electronically. Courts may want to consider a local rule requiring the movant to notify the bankruptcy court of the filing of such a motion, as well as the disposition of the motion, and to identify what records need to be transmitted. Courts should seek to transmit notice electronically.

### **Forms 17 A, 17B, and 17C**

Official Form 17 will be replaced by three separate forms: 17A, 17B, and 17C. Official Form 17A is the Notice of Appeal and Statement of Election, Part 4 of which applies to BAP courts only and allows the appellant the option of electing to have the appeal heard by district court. Form 17B is the (optional) Appellee Statement of Election to have the appeal heard in district court instead of the BAP. Form 17C pertains to the length of briefs.

### **Rules Governing New Trials, Amendment of Judgments and Relief from Judgment or Order**

- Rule 9023 (governing new trials and amendment of judgments) and Rule 9024 (governing relief from a judgment or order) will add reference to the procedure in amended Rule 8008 addressing indicative rulings.
- Rule 8008 provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue.

The following rule changes will not take effect this year:

### **Proposed Amendments in Response to *Stern v. Marshall*, 131 S. Ct. 2594 (2011)**

#### **(7008, 7012, 7016, 9027, and 9033)**

- The proposed *Stern*-related amendments to 7008, 7012, 7016, 9027, and 9033 were withdrawn due to the case of *Executive Benefits Insurance Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (9<sup>th</sup> Cir. 2012), cert. granted, 133 S.Ct. 2880, 186 L.Ed.2d 908 (2013). The Supreme Court issued its opinion in the *Bellingham* case on June 9, 2014, which will be considered by the Rules Committee at an upcoming meeting.

## Pending Changes in the Bankruptcy Forms

The following amendments to the Official Bankruptcy Forms will take effect on December 1, 2014, approved by the Judicial Conference at its meeting in September 2014.

**Official Forms 3A** (Application for Individuals to Pay the Filing Fee in Installments) and **3B** (Application to Have the Chapter 7 Filing Fee Waived) are revised to remove references to fee amounts.

**Official Form B6Sum (Summary)** is revised to update line number cross references to the revised means test forms (Official Forms 22A-1, 22A-1 Supp, 22A-2, 22B, 22C-1 and 22C-2).

**Official Forms 17A** (Notice of Appeal and Statement of Election), **17B** (Optional Appellee Statement of Election to Proceed in District Court) and **17C** (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)) are new forms set to go into effect with the revised bankruptcy appellate rules.

**Official Forms 22A-1** (Chapter 7 Statement of Your Current Monthly Income), **22A-1 Supp** (Statement of Exemption from Presumption of Abuse Under §707(b)(2)), **22A-2** (Chapter 7 Means Test Calculation), **22B** (Chapter 11 Statement of Your Current Monthly Income), **22C-1** (Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period) and **22C-2** (Chapter 13 Calculation of Your Disposable Income) are the revised means test forms. These forms are revised to accommodate changes in the law as a result of Supreme Court precedent and as part of the Bankruptcy Rules Advisory Committee's ongoing Forms Modernization Project.

## Pending Changes in the Bankruptcy Forms

B 3A Application for Individuals to Pay the Filing Fee in Installments (12/14)  
Form | Committee Note

B 3B Application to Have the Chapter 7 Filing Fee Waived (12/14)  
Form | Committee Note

B 06 Summary (12/14)  
Form | Committee Note

B 17A Notice of Appeal and Statement of Election (12/14)  
Form | Committee Note

B 17B Optional Appellee Statement of Election to Proceed in District Court (12/14)  
Form | Committee Note

B 17C Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2) (12/14)  
Form | Committee Note

B 22A-1 Chapter 7 Statement of Your Current Monthly Income (12/14)  
Form | Instructions

B 22A-1 Supp Statement of Exemption from Presumption of Abuse Under §707(b)(2) (12/14)  
Form

B 22A-2 Chapter 7 Means Test Calculation (12/14)

Form

B 22B Chapter 11 Statement of Your Current Monthly Income (12/14)

Form | Instructions

B 22C-1 Chapter 13 Statement of Your Current Monthly Income and Calculation of  
Commitment Period (12/14)

Form | Instructions

B 22C-2 Chapter 13 Calculation of Your Disposable Income (12/14)

Form

B 22 Committee Note

Committee Note