

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

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**TO:** Anthony J. Scirica, Chair  
Committee on Rules of Practice and Procedure

**FROM:** Adrian G. Duplantier, Chair  
Advisory Committee on Bankruptcy Rules

**DATE:** December 3, 1999

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on September 28-29, 1999, in Jackson Hole, Wyoming.

**II Action Items**

The Advisory Committee on Bankruptcy Rules will not be presenting any matters for action at the Standing Committee's meeting in Coral Gables, Florida on January 7-8, 2000.

**III. Information Items**

*A. Publication of Proposed Rule Amendments*

At its June 1999 meeting, the Standing Committee authorized the publication of a preliminary draft of proposed amendments to the Bankruptcy Rules. There are nine proposed amendments that would affect eight separate rules. Two separate amendments contain revisions of subdivisions of Rule 2002.

The preliminary draft was published in August 1999 for comment by the bench and bar. The deadline for submitting written comments on the amendments is February 15, 2000. A public hearing is scheduled for January 18, 2000, in Washington, D.C. To date, no requests for personal appearances have been received. Moreover, no one has yet submitted any written comments on the proposed amendments. Any comments that may be received will be considered by the Advisory Committee at its March 2000 meeting. The Advisory Committee

expects to present these Proposed Rules Amendments for approval by the Standing Committee at its June 2000 meeting.

B. *Proposed Bankruptcy Legislation*

Congress has continued to consider substantial reform of the Bankruptcy Code. The House of Representatives passed H.R. 833 by a significant majority, but the Senate did not act on its version of the bill prior to the close of legislative session on November 19, 1999. As with prior versions of these bills, there are a number of provisions that would require amendments and additions to the Bankruptcy Rules and Official Bankruptcy Forms. Indeed, some provisions actually direct the Advisory Committee to propose rules changes.

The Senate is scheduled to take up the bankruptcy reform legislation when it reconvenes in January, 2000. The Advisory Committee continues to monitor these legislative developments closely.

C. *Financial Disclosure Rules*

The Advisory Committee on Bankruptcy Rules also considered a proposal to adopt a uniform rule requiring the disclosure of financial interests patterned on Appellate Rule 26.1. The Committee approved in principle the adoption of a rule that would require additional disclosure of corporate parents and partnership members. The Committee identified concerns about the application of such a rule given the potential for many thousands of parties in interest in a bankruptcy case, and noted that these issues may be similar to those presented in the context of class action litigation. The Committee's communication to the Committee on Codes of Conduct is attached to this report.

D. *Compromise and Settlement of Bankruptcy Appeals*

At the request of the Advisory Committee on Appellate Rules, and Bankruptcy Judge L. Edward Friend, the Advisory Committee on Bankruptcy Rules considered whether it would be appropriate to amend the Appellate Rules to include a reference in those rules to Bankruptcy Rules 1019 and 7014 that govern compromise and settlement of matters in bankruptcy cases. The Committee concluded that incorporating a reference to those Bankruptcy Rules in Rule 6 of the Federal Rules of Appellate Procedure would be of benefit to parties to appeals who intend to settle or compromise their disputes. A copy of the Committee's communication to the Advisory Committee on Appellate Rules is attached to this report.

Attachments:

Communication to Committee on Codes of Conduct setting out the position of the Advisory Committee on Bankruptcy Rules regarding the disclosure of financial information

Communication to Advisory Committee on Appellate Rules conveying the position of the Advisory Committee on Bankruptcy Rules regarding the amendment of Rule 6 of the Federal Rules of Appellate Procedure to refer parties to the rules governing compromise and settlement in bankruptcy cases

Draft of Minutes of the Advisory Committee meeting of September 28-29, 1999.

## MEMORANDUM

**TO:** Committee on Codes of Conduct

**FROM:** Adrian G. Duplantier, Chair  
Advisory Committee on Bankruptcy Rules

**RE:** Financial Disclosure

**DATE:** December 1, 1999

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At its meeting on September 28-29, 1999, the Advisory Committee on Bankruptcy Rules, considered the proposal that a uniform rule be adopted requiring disclosure of financial interests patterned on Appellate Rule 26.1. The Advisory Committee concluded that a uniform rule would be appropriate, but cautioned that the nature of bankruptcy cases could present particular problems in the administration of such a rule.

The Committee considered that the disclosure requirements generally would operate well in the context of adversary proceedings and contested matters within a bankruptcy case. These proceedings are essentially the same as other civil litigation in the district courts. Extending the disclosure requirements to the bankruptcy case (as opposed to proceedings in the case), however, may cause potentially significant problems. For example, disclosure of the parent corporations of creditors could be extremely burdensome in cases with hundreds or even thousands of creditors. Furthermore, there may also be a significant number of corporate or partnership entities who are parties to executory contracts or unexpired leases with the debtor, and the final resolution of the case will impact these entities as well. The debtor may not know whether the parties with whom it has dealt are subsidiaries or partners of other entities. Consequently, there could be problems simply identifying the related entities. While the proof of claim form could require the identification of the related entities, in Chapter 11 cases creditors must file a proof of

claim only if their claim is listed as disputed, contingent, or unliquidated. *See* 11 U.S.C. § 1111(a). Parties to executory contracts and unexpired leases also need not file proof of a claim. Therefore, filings by the debtor are the only source for the information, and that information generally would not be available to the debtor. Thus, it may be difficult, to implement a rule such as Rule 26.1 of the Federal Rules of Appellate Procedure for all interested parties in a bankruptcy case.

The Advisory Committee on Bankruptcy Rules believes that a uniform rule is appropriate, but suggests that any such rule be sensitive to these problems. In some ways, the problems in the bankruptcy courts are similar to the disqualification based on a judge's financial interest in class action case. The resolution of the financial disclosure problem in that context may be very instructive to the Advisory Committee on Bankruptcy Rules. We welcome any direction either from the Committee on Codes of Conduct or the Advisory Committee on Civil Rules on these issues.

## MEMORANDUM

**TO:** Advisory Committee on Appellate Rules

**FROM:** Adrian G. Duplantier, Chair  
Advisory Committee on Bankruptcy Rules

**RE:** Compromise and Settlement of Bankruptcy Appeals

**DATE:** December 1, 1999

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The Advisory Committee on Appellate Rules, has asked whether the Advisory Committee on Bankruptcy Rules would recommend that amendment(s) be proposed to set out the proper treatment of Rule 9019 which governs generally the compromise and settlement of matters in bankruptcy cases. Settlement of adversary proceedings involving objections to discharge are governed by Bankruptcy Rule 7041. Both of these rules recognize that the settlement or compromise of matters can have a profound impact on entities that are not parties to the proceeding and would not be parties to any appeal. FRAP 33, on the other hand, authorizes the entry of any necessary order to dispose of an appeal. Local appellate rules may take this authority even further by extending the power to enter necessary orders even to mediators. (*See, e.g., 4<sup>th</sup> Cir. Local Rule 33.*)

The Advisory Committee on Bankruptcy Rules considered this issue at its meeting on September 28-29, 1999, for the purpose of offering its views to the Advisory Committee on Appellate Rules. After deliberation, the Advisory Committee on Bankruptcy Rules concluded that it is both appropriate and desirable to incorporate a reference to Bankruptcy Rules 9019 and 7014 into Rule 6 of the Federal Rules of Appellate Procedure. Including such a reference would inform counsel to these appeals that they still must comply with Bankruptcy Rules 9019 and

7014, as appropriate.