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December 18, 2007

TO: Honorable John G. Roberts, Jr.
Chief Justice of the United States

RE: Summary of Proposed Amendments to the Federal Rules

The amendments to the Federal Rules of Practice and Procedure transmitted from the Judicial Conference are intended to have the following consequences.

BANKRUPTCY RULES

Most of the 32 rules amendments and 7 new rules proposed to the Bankruptcy Rules are based on the Interim Bankruptcy Rules. These Interim Rules were adopted by almost all bankruptcy courts in August 2005 to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") (which became effective on October 17, 2005) on an interim basis, until final rules could be put in place.

The bench and bar have reported a favorable experience with the Interim Rules. The proposed amendments to the national rules follow the Interim Rules closely, with slight adjustments to certain rules. A few rules amendments and new rules are proposed that were not included in the Interim Rules. These amendments and new rules address BAPCPA provisions that did not require immediate implementation.

The proposed amendment to Rule 1005 requires a debtor to disclose all names or aliases used by the debtor in the past eight years (rather than six years as in the current rule). It also requires disclosure, in the title of a case, of the last four digits of an individual debtor's taxpayer-identification number.

The proposed amendment to Rule 1006 requires the debtor in a chapter 7 case to use the appropriate Official Form in order to apply for a filing fee waiver.

The proposed amendment to Rule 1007 requires a debtor to file a variety of documents mandated under BAPCPA, limits the extension of time that may be granted to a small-business debtor to file schedules and statements, and requires a foreign representative filing a petition to

Summary of Proposed Amendments to the Federal Rules

Page 2

commence a case under chapter 15 to include a list of entities with whom the debtor is engaged in litigation in the United States.

The proposed amendment to Rule 1009 corrects a cross-reference to the Bankruptcy Code.

The proposed amendment to Rule 1010 requires a foreign representative seeking recognition of a pending foreign nonmain proceeding to serve a summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. It also requires each corporate petitioner in an involuntary case to file a corporate ownership disclosure statement.

The proposed amendment to Rule 1011 requires the corporate debtor named in an involuntary case, and the corporation responding to a petition in a cross-border insolvency case, to file a corporate ownership disclosure statement. The proposed amendment includes other changes necessary to conform to BAPCPA's new chapter 15 provisions.

The proposed amendment to Rule 1015 conforms the cross-references to a renumbered section of the Bankruptcy Code.

The proposed amendment to Rule 1017 permits a party in interest to move to dismiss a chapter 7 consumer-debt case as abusive. The party must state with particularity the circumstances of the alleged abuse if the motion is made under § 707 (b)(1) or (3) of the Bankruptcy Code.

The proposed amendment to Rule 1019 preserves, upon conversion of a case from chapter 13 to chapter 7, the deadlines for a motion to dismiss a case under § 707(b).

The proposed amendment to Rule 1020 provides procedures to determine whether the debtor is a small business. A party objecting to the small-business designation must file objections within a limited time period.

Proposed new Rule 1021 provides procedures for designating a debtor as a health-care business, including procedures authorizing a party in interest to object to the designation.

The proposed amendment to Rule 2002 requires a court promptly to provide all creditors a copy of the trustee's statement as to whether the debtor's case will be presumed to be abusive; requires a court to provide notice – to a debtor, to entities against whom provisional relief is sought, and to others – of a hearing on a petition for recognition of a foreign proceeding; and implements some changes BAPCPA made to business provisions of the Bankruptcy Code.

The proposed amendment to Rule 2003 authorizes a court to order that a creditors' meeting need not be convened if the debtor already has solicited acceptances of a plan before commencing the case.

The proposed amendment to Rule 2007.1 requires an elected trustee to file an affidavit identifying that person's connections with creditors and others having an interest in the case.

Proposed new Rule 2007.2 requires appointment of a patient-care ombudsman within the first 30 days of a case involving a healthcare business, unless the court finds that such an appointment is not necessary for the protection of patients. The new rule also establishes procedures for a party in interest to file a motion to appoint, terminate, or object to the appointment of an ombudsman.

The proposed amendment to Rule 2015 requires a small-business chapter 11 debtor to file periodic financial and operating reports. It also requires a foreign representative to file a notice of a change in status in the foreign proceeding or in the representative's appointment.

Proposed new Rule 2015.1 establishes notice requirements for reports issued by a healthcare ombudsman, requiring that any request by an ombudsman to review patient records must be approved by the court. It also provides an opportunity for a trustee, patient, or other interested person to object to the ombudsman's request.

Proposed new Rule 2015.2 implements BAPCPA's provisions authorizing a trustee to relocate patients when a healthcare debtor business is being closed. It provides patients an opportunity to object to the trustee's relocation determination.

Proposed new Rule 2015.3 requires a debtor in possession or a trustee in a chapter 11 case to file periodic reports on the value, operations, and profitability of certain entities in which the estate holds a substantial or controlling interest.

The proposed amendment to Rule 3002 conforms to the new BAPCPA requirement that government units have additional time to file proofs of claim arising from tax returns filed during a chapter 13 case. The amendment also authorizes the court to extend the time for a creditor with a foreign address to file a proof of claim.

The proposed amendment to Rule 3003 provides that a court may extend the time for a creditor with a foreign address to file a proof of claim in a chapter 9 or a chapter 11 case.

The proposed amendment to Rule 3016 provides that a small-business debtor need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary.

Summary of Proposed Amendments to the Federal Rules

Page 4

The proposed amendment to Rule 3017.1 permits the court in a small-business chapter 11 case to conditionally approve a plan intended to provide adequate information.

The proposed amendment to Rule 3019 establishes a procedure in an individual debtor's chapter 11 case for filing and objecting to a proposed modification of a confirmed plan.

The proposed amendment to Rule 4002 requires a debtor to bring to the creditors' meeting a government-issued picture identification, evidence of a social security number and current income, and statements of financial accounts existing when the case commenced. The proposed amendment also establishes procedures for the debtor to provide recent federal income tax returns or tax transcripts to the trustee and creditors.

The proposed amendment to Rule 4003 permits a trustee to object to an exemption as fraudulent at any time up to one year after a case is closed. The amendment also establishes procedures conforming to BAPCPA's provisions limiting the state homestead exemption if the debtor was convicted of a felony or owes a debt arising from certain causes of action.

The proposed amendment to Rule 4004 requires a debtor to complete a financial management program before the court may enter a discharge. The proposed amendment also authorizes the court to postpone a discharge to determine whether the debtor has committed a felony or owes a debt arising from certain causes of action.

The proposed amendment to Rule 4006 requires the clerk to provide notice to all parties in interest, including the debtor, when no discharge was entered.

The proposed amendment to Rule 4007 provides time limits governing the filing and notice of a complaint to determine the dischargeability of a debt in a chapter 13 case.

The proposed amendment to Rule 4008 provides a deadline for filing a reaffirmation agreement. It also requires the debtor to file a signed statement showing total income and expenses from schedules I and J and explaining any discrepancies between the amounts shown on the schedules and the debtor's income and expenses shown on the reaffirmation documentation.

The proposed amendment to Rule 5001 authorizes a bankruptcy judge, in an emergency situation, to hold hearings outside the district in which the case is pending.

The proposed amendment to Rule 5003 permits government taxing authorities to designate addresses to use for serving a request under § 505(b)(1) of the Bankruptcy Code.

Proposed new Rule 5008 requires the clerk to give written notice to all creditors, no later than 10 days after the filing of a petition in an individual consumer-debt case, that a presumption

of abuse has arisen if the debtor's filing indicates the existence of such a presumption. The new rule also requires written notice when the debtor has failed timely to file the disclosure concerning the presumption of abuse.

The proposed amendment to Rule 6004 requires the appointment of a consumer-privacy ombudsman if a trustee proposes, in certain circumstances, to sell information that includes personal identifiers.

Proposed new Rule 6011 requires the trustee to notify patients that their medical records will be destroyed if the records remain unclaimed for one year after publication of the notice.

The proposed amendment to Rule 8001 implements BAPCPA's provisions for direct appeals to the court of appeals.

The proposed amendment to Rule 8003 provides that the requirement of leave to appeal is satisfied, even if no motion for leave to appeal has been filed, by a certification by the lower court or by the allowance of leave to appeal by the court of appeals.

The proposed amendment to Rule 9006 provides that extensions of time allowed a small-business debtor for filing schedules and a statement of financial affairs cannot extend beyond the time set by § 1116(3) of the Bankruptcy Code.

The proposed amendment to Rule 9009 provides that a plan proponent in a small-business chapter 11 case need not use an Official Form for a plan of reorganization and disclosure statement.

The proposed amendments to Rules 7012, 7022, 7023.1, and 9024 correct cross-references to various Civil Rules to conform to the newly restyled Civil Rules.

CRIMINAL RULES

The proposed amendments – except for the proposed amendments to Rules 41 and 45 – implement various provisions of the Crime Victims' Rights Act, 18 U.S.C. § 3771 ("the CVRA").

The proposed amendment to Rule 1 incorporates by reference the CVRA's definition of "crime victim."

The proposed amendment to Rule 12.1 prevents automatic disclosure to the defense of a crime victim's address and telephone number when an alibi defense is raised and the government intends to rely on the victim's testimony to establish the defendant's presence at the scene of the alleged offense. The rule requires that to obtain this information, the defendant must establish a

need for it. Even if a need is established, the rule authorizes the court to “fashion a reasonable procedure that allows preparation of the defense and also protects the victim’s interests.”

The proposed amendment to Rule 17 requires a court order before a subpoena can be issued to a third party to obtain personal or confidential information about a victim. The victim must be notified of such a request unless exceptional circumstances are shown to the court.

The proposed amendment to Rule 18 requires the court, in setting the place of trial, to consider the convenience of the victim as well as the convenience of the defendant and witnesses.

The proposed amendment to Rule 32 adopts the CVRA’s definition of “crime victim” that was incorporated into the rules by the proposed amendment to Rule 1. The amendment provides that the presentence investigation report should include information pertinent to restitution whenever the law permits the court to order restitution, not only when the law requires restitution. The amendment also incorporates the CVRA’s language that the victim has the right “to be reasonably heard” in judicial proceedings regarding sentencing.

Proposed new Rule 60 (current Rule 60 would be renumbered as Rule 61) provides that the government must use its best efforts to give the victim reasonable, accurate, and timely notice of any public court proceeding involving the crime; the court must not exclude a victim from a public court proceeding involving the crime unless there is clear and convincing evidence that the victim’s testimony would be materially altered by attending the proceeding; the victim has the right to be reasonably heard at any public hearing on release, plea, or sentencing; and the court must promptly decide any motion asserting a victim’s rights, which motion may be made by the victim or the victim’s legal representative.

The proposed amendment to Rule 41 authorizes a magistrate judge in a district in which activities related to a crime may have occurred, or in the District of Columbia (when the place to be searched is outside the jurisdiction of any other district), to issue a search warrant for property located outside any state or federal judicial district, but within a United States territory, possession, or commonwealth, or within the premises of a United States diplomatic or consular mission.

The proposed amendment to Rule 45 corrects a cross-reference to Civil Rule 5 in order to conform to the restyled Civil Rules.

Lee H. Rosenthal
Chair, Committee on Rules of Practice and
Procedure

cc: Honorable Laura Taylor Swain, Chair, Advisory Committee on Bankruptcy Rules
Honorable Richard C. Tallman, Chair, Advisory Committee on Criminal Rules