

REQUEST FOR COMMENTS ON THE TIME TO FILE A NOTICE OF APPEAL IN A BANKRUPTCY CASE

As a part of revisions to the Bankruptcy Rules that have been proposed to conform the deadlines to the new computation principles that have been proposed for implementation throughout the Appellate, Civil, and Criminal Rules, Bankruptcy Rule 8002 is proposed to be amended to set 14 days as the deadline for filing a notice of appeal from a judgment, order or decree in a bankruptcy case. This is consistent with the time computation principles, which set deadlines of fewer than 30 days as multiples of seven days. The Advisory Committee on Bankruptcy Rules considered leaving the deadline under Rule 8002 at 10 days,¹ but decided that extending the time to 14 days would not unduly disrupt bankruptcy practice and would promote a greater degree of consistency both within the Bankruptcy Rules and between the Bankruptcy Rules and the other federal rules. Comment is encouraged as to whether the extension to 14 days would cause any material disruption in bankruptcy practice.

In reviewing the notice of appeal deadline in connection with the time computation rules, the Advisory Committee on the Bankruptcy Rules also considered whether Rule 8002 should be further amended at some future time to extend the appeal deadline to 30 days, making it consistent with the time allowed for filing a notice of appeal in civil cases under Rule 4(a)(1) of the Federal Rules of Appellate Procedure. The arguments posed in favor of amending Bankruptcy Rule 8002 to establish a 30-day deadline for filing a notice of appeal included the promotion of consistency between standard civil practice and bankruptcy practice, and the elimination of a potential trap for new or infrequent bankruptcy practitioners. It was also argued that, as a practical matter, many practitioners now rely on Bankruptcy Code §§ 363(m) and 364(e), and/or principles of equitable mootness, rather than the expiration of the deadline for commencing appeals, to ensure the finality of orders approving transactions.

Arguments for retention of the shorter appellate deadline in bankruptcy focused on the elimination of uncertainty as to whether any particular order would be appealed, noting that, in a number of situations, the finality of an order may affect many other aspects of the case. Advocates of the shorter period also noted that even the protections offered by §§ 363 and 364 may not be available if the court finds that the underlying sale or financing was not undertaken in good faith.

The Advisory Committee would be grateful to have the benefit of the views of the bench and bar in determining whether the proposed 14-day deadline in the proposed amendment to Rule 8002 is appropriate and suitable to the needs of current practice. The Advisory Committee would also be grateful for comment as to whether consideration should be given to the question of further extending the deadline in the future to make it consistent with the 30-day general civil appellate deadline imposed by Federal Rule of Appellate Procedure 4(a)(1). Comments on both issues can be submitted electronically to <Rules_Comments@ao.uscourts.gov>. Comments should be submitted by February 15, 2008.

¹ The 10-day appellate deadline currently imposed by Bankruptcy Rule 8002 is derived from the Bankruptcy Act of 1898. The 10-day deadline was statutory until the enactment of the Bankruptcy Code in 1978, and was also incorporated into the Bankruptcy Rules promulgated under the Bankruptcy Act.