

Bankruptcy Law

The 2009 Bankruptcy Rule Amendments: A Brief Summary

By Henry M. Karwowski

The year 2009 brought significant changes to the procedural rules applicable in bankruptcy cases and proceedings: the Federal Rules of Bankruptcy Procedure; the Federal Rules of Civil Procedure, many of which are incorporated into the Bankruptcy Rules; and the Local Rules of the United States Bankruptcy Court for the District of New Jersey. This article briefly summarizes the most noteworthy amendments.

Computation of Deadlines and Periods of Time

Perhaps the most significant amendments relate to deadlines and periods of time. In computing a deadline or period of time, a court now counts every day, including intermediate Saturdays, Sundays and legal holidays. Further, many of the deadlines or periods of time in the rules now derive from a multiple of seven days,

Karwowski is a shareholder of the law firm of Trenk, DiPasquale, Webster, Della Fera & Sodono in West Orange, is an adjunct professor at Seton Hall University School of Law and is the author of New Jersey Bankruptcy Rules Annotated, published by ALM.

so that the deadline or the final day of a period now falls on a weekday.

Thus, the following rules now impose a deadline or set a period of seven days: Bankruptcy Rules 2008 (time to reject selection as trustee); 6004(b) (time to file and serve objection to proposed use, sale or lease of property); Federal Rule 55(b) (required period for notice of application for default judgment against party that has appeared personally or by representative) (incorporated by Bankruptcy Rule 7055); Local Rules 2014-1(a) (time to file and serve objection to application for order approving employment of professional person); 2090-1(b) (required period for notice of application for admission pro hac vice); 3015-2(a) (time to file and serve preconfirmation modification of Chapter 13 plan); 4001-1(f) (time to file and serve objection to consent order in lieu of motion for relief from automatic stay in Chapter 11 case); 9013-1(j)(2) (time to serve objection to consent order in lieu of motion for adequate protection in Chapter 11 case); 9019-2(d)(1) (time for mediator to file notice of disqualification); 9072-1(c) (time to file and serve revised form of order); 9072-1(d), 9072-2(b) (time to file and serve objection to revised form of order and alternative form of order).

The following bankruptcy rules now impose a deadline or set a period of 14

days: 1007(a), (c), (f), (h) (time to file lists, schedules, statements, and other documents); 2015.2 (required period for notice of patient transfer in health care business); 2016(b), (c) (time to file statement of debtor's attorney's or bankruptcy petition preparer's compensation); 3015(b) (time to file Chapter 13 plan); 3020(e) (period of stay of Chapter 11 confirmation order); 4001(a), (b), (c) (period of stay of order granting relief from automatic stay; period of time before which court may commence final hearing on motion to use cash collateral or on motion for authority to obtain credit); 6004(h) (period of stay of order authorizing use, sale or lease of property); 6006(d) (period of stay of order authorizing assignment of contract or lease); 6007(a) (time to file and serve objection to proposed abandonment or disposition of property); 7004(e) (time to serve summons and complaint); 7012(a) (time to serve responsive pleading after denial of motion under Rule 7012 or after grant of motion for more definite statement); 7052 (time to file motion for amended or additional findings); 8002 (time to file notice of appeal and certain motions which stay time to appeal); 8003(a), (c) (time to file motion for leave to appeal and opposition to motion); 8006 (time to file designations of record on appeal and statements of issues to be presented); 8009(a) (time

to file appellate briefs); 8015 (time to file motion for rehearing on appeal); 8017(a) (period of stay of judgment on appeal); 9023 (time to file motion for new trial or to alter or amend judgment; time for court to order on its own a new trial); 9027(e) (time to file response to notice of removal).

Likewise, the following federal and local rules impose a deadline or set a period of 14 days: Federal Rules 12(e) (time to file more definite statement) (incorporated by Bankruptcy Rule 7012); 14(a) (time to file third-party complaint) (incorporated by Bankruptcy Rule 7014); 15(a) (time to respond to amended pleading) (incorporated by Bankruptcy Rule 7015); 32(a) (required period for notice of deposition) (incorporated by Bankruptcy Rule 7023); 38 (time to demand jury trial) (incorporated by Bankruptcy Rule 9015); 62(a) (period of time before execution may issue on judgment) (incorporated by Bankruptcy Rule 7062); 65(b) (period of time of temporary restraining order) (incorporated by Bankruptcy Rule 7065); 68(a) (time to serve offer of judgment) (incorporated by Bankruptcy Rule 7068); 81(c) (time to demand jury trial after removal) (incorporated by Bankruptcy Rule 9015); Local Rules 4001-1(b) (time to file chapter 13 debtor's certification in opposition to creditor's certification of default); 9013-1(h) (time to file motion for reconsideration); and 9019-2(d)(2) (time to serve notice of initial mediation conference).

The following rules now impose a deadline or set a period of 21 days: Bankruptcy Rules 1011(b) (time to file and serve defenses and objections to involuntary petition); 2002(a), (o), (q) (required period for notice of certain events and deadlines in bankruptcy case); 2003(a) (required date for meeting of creditors); 3001(e) (time to object to transfer of claim); 3015(g) (required period for notice of time to file objection to post-confirmation modification of Chapter 13 plan); 3019(b) (required period for notice of time to file objection to post-confirmation modification of individual's Chapter 11 plan); 6003 (period of time immediately following filing of petition in which court cannot grant certain relief); 7012(a) (time to serve answer to

cross-claim and reply to counterclaim); 8002(c) (time to file motion for extension of time to appeal); 9027(g) (time to answer or otherwise present defenses or objections following removal); Federal Rule 12(f) (time to file motion to strike pleading) (incorporated by Bankruptcy Rule 7012); Local Rules 3015-1(b) (time to serve Chapter 13 plan containing certain motions); and 9013-1(c) (required period for notice of motion).

The following rules now impose a deadline or set a period of 28 days: Bankruptcy Rules 2002(b) (required period for notice of time to file certain objections and of certain hearings); 3017(a), (f) (required period for notice of hearing to consider disclosure statement and for notice of time to file objections to and hearing on injunction under Chapter 11 plan); and 4004(a) (required period for notice of time to file complaint objecting to discharge).

Auctioneers and Liquidators

Under Local Rule 2014-1(c), an application for employment of an auctioneer must now contain, in addition to the previously required items, (i) the proposed method of calculation of the applicant's compensation; and (ii) an estimate of the applicant's costs and expenses. Also, the court may now waive the requirement that an auctioneer must file an application for compensation and reimbursement of expenses under Local Rule 2016-1. If the court waives the requirement, the applicant must, under Local Rule 2016-1(g), timely file an Information for Notice of Auctioneer Compensation. If an objection is filed, however, the court may require the applicant to file an application for compensation and reimbursement of expenses or may require a hearing. Also, the applicant must file such an application if the actual compensation or expenses ultimately exceed the estimate in the application for employment.

Also, Local Rule 2014-1(d) now provides for the employment of a liquidator. While the term "auctioneers" includes disinterested professionals who conduct public sales of estate property, the term

"liquidators" includes non-disinterested persons who liquidate estate property through public or private sale. An application for employment of a liquidator must include, in addition to the items required in an auctioneer application, disclosure of any agreements between the liquidator and the debtor the means by which the liquidator will address state and local regulations in a Going Out of Business sale and any impact upon the debtor's leasehold agreements.

Finally, Local Rule 2014-1(c) and (d) now require an auctioneer or liquidator to file a report of results within 21 days of conclusion of a sale.

Other Amendments

Under Bankruptcy Rule 4008, a debtor must now file Official Form 27, entitled "Reaffirmation Agreement Cover Sheet," with any reaffirmation agreement. The form requires disclosure of information necessary for the court to determine whether the agreement establishes a presumption of undue hardship for the debtor and requires an explanation of any difference between the income and expenses stated on the debtor's Schedules I and J and on the debtor's Statement in Support of Reaffirmation Agreement.

Under Federal Rule 15(a), incorporated by Bankruptcy Rule 7015, a party may now amend its pleading once as a matter of course within 21 days after (A) service of the pleading; or (B) service of a responsive pleading or a motion under Rule 12 for dismissal, for more definite statement or order striking pleading, whichever is earlier.

Under Federal Rule 56, incorporated by Bankruptcy Rule 7056, any party may now move for summary judgment at any time, even as early as the commencement of the action, until 30 days after the close of discovery.

Under Local Rule 5071-1(a), an adjournment request must now be made no later than three business days before the hearing date.

Given the amendments, both in number and in significance, attorneys should immediately familiarize themselves with the updated rules. ■