

ON THE RECORD WITH THE AO

By Scott Myers¹

NEWS FROM THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The winter issue of American Bankruptcy Trustee Journal is usually published in the middle of the annual public comment period for proposed changes to the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms. This year, however, in addition to the usual public comment period (from August 2019 through February 2020), additional rules and form amendments were required as a result of the enactment of two pieces of bankruptcy legislation: The Helping American Veterans in Extreme Need Act, and the Small Business Reorganization Act of 2019. Details of the required changes to the rules and forms are below.

I The HAVEN Act (changes to Means-Test forms)

At its September 26, 2019 meeting, the Advisory Committee approved technical conforming amendments to lines 9 and 10 of Official Forms 122A-1, 122B, and 122C-1 to address the Honoring American Veterans in Extreme Need Act of 2019 (the “HAVEN Act”), Pub. L. No. 116-52. As revised by the HAVEN Act, the definition of “current monthly income” in § 101(10A) excludes certain amounts payable “in connection with a disability, combat-related injury or disability or death of a member of the uniformed services.” The recommended form amendments clarify that such income should be excluded from the calculation of current monthly income.

Because the HAVEN Act became effective upon passage on August 26, 2019, the Advisory Committee’s amendments to Official Forms 122A-1, 122B, and 122C-1 have already gone into effect.

II Interim Rule and Form Changes in Response to the Small Business Reform Act of 2019 (effective February 19, 2020)

The Small Business Reorganization Act, Pub. L. No. 116-54, 133 Stat. 1079 (“SBRA”), creates a new subchapter V of chapter 11 for the reorganization of small business debtors. It does not repeal existing chapter 11 provisions regarding small business debtors, but instead creates an alternative procedure that small business debtors may elect to use. The President signed the legislation on August 23, 2019. It will go into effect on February 19, 2020 – long before the normal three-year rules enabling act process can run its course.

At its September 26, 2019 meeting, the Advisory Committee recommended publishing

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for comment eight interim bankruptcy rules (to be adopted by courts as local rules or by general order), changes to seven official forms, and the adoption of two new official forms. The Standing Committee subsequently approved the request for a four-week publication period of the rules and forms, from October 16 through November 13.

The committees anticipate making any adjustments called for by the public comments and then seeking approval from the Executive Committee of the Judicial Conference, acting on an expedited basis on behalf of the Judicial Conference, to distribute the interim rules to judicial districts. Assuming no delays in the approval process, distribution to the courts should occur in mid-to-late December, around the time this article is published. You will need to check with your local court for details on its adoption of the interim rules. The revised forms will be posted on the judiciary's public website and distributed to courts the same time as the interim rules. The committees will then move forward with regular promulgation of the proposed SBRA rule changes under the Rules Enabling Act.² Those rules, when finally approved, will replace the interim rules.

If the interim rules and official form changes have not yet been adopted in your court when you read this, you can check the following links for the latest information on the current status.

Before mid-December 2019: Check the "[Proposed Amendments Published for Public Comment](#)" page. (type "proposed amendments" in the search box of any page at uscourts.gov).

Mid-to-late December 2019, and after: Check the "[Pending Rules and Forms Amendments](#)" page for the interim rules (type "pending amendments" in the uscourts.gov search box), and the "[Pending Changes in the Bankruptcy Forms](#)" page for the forms (type "pending forms" in the search box at uscourts.gov).

III Rules Published for Comment in August 2019

The current comment period started mid-August, 2019, and is scheduled to close February 19, 2020. Copies of the proposed amendments are contained in the "Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and Federal Rules of Evidence" (Preliminary Draft) available on the judiciary's public website at the "[Proposed Amendments Published for Public Comment](#)" page. (type "proposed amendments" in the search box of any page at uscourts.gov).

² Although changes to the Official Forms will be officially promulgated by February 2020 pursuant to the Advisory Committee's delegated authority from the Judicial Conference to issue conforming Official Form amendments, the committees intend to publish them again under the regular procedure to ensure that the public has a thorough opportunity to review them.

A. Rule 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination)

Subsection (c) of the rule is amended to delete the references to 18 U.S.C. § 3146(a) and (b) and replace them with a reference to the “relevant provisions and policies of § 3142.” The change is needed because Sections 3141 through 3151 of Title 18 were repealed by the Bail Reform Act of 1984 and replaced by new provisions dealing with bail. Because much of § 3142 contains provisions bearing on topics not included in former 18 U.S.C. § 3146(a) and (b), the rule is also amended to limit the reference to the “relevant” provisions and policies of § 3142.

B. Rule 3007 (Objections to Claims)

Rule 3007(a)(2)(A)(ii) is amended to clarify that the special service method required by Rule 7004(h) must be used for service of objections to claims only on insured depository institutions as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813. The clarification addresses a possible reading of the rule that would extend such special service in claims objections not just to banks, but to credit unions as well.

C. Rule 7007.1 (Corporate Ownership Statement)

Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene, and stylistic changes are made to subdivision (b) to reflect that some statements will be filed by nonparties seeking to intervene. The changes conform to recent amendments to Rule 8012, and to disclosure statement rules in the Federal Rules of Appellate and Civil Procedure.

D. Rule 9036 (Notice and Service Generally); Rule 2002(g)(1); Official Form 410

The proposed amendment to Rule 9036, the second in two years, is designed to account for the Administrative Office of the United States Courts’ proposed program for providing notice to high-volume paper-notice recipients. Under this program, when the Bankruptcy Noticing Center (“BNC”) has mailed more than a designated number of notices in a calendar month (initially set at 100) from bankruptcy courts to an entity, the Director of the Administrative Office will notify the entity that it is a high-volume paper-notice recipient and that it must register an electronic notice address with the BNC.

If a notified entity subsequently enrolls in Electronic Bankruptcy Noticing with the BNC, it will be sent notices electronically at the address maintained by the BNC. If a notified entity does not timely enroll in Electronic Bankruptcy Noticing, it will be informed that court-generated notices will be sent to an electronic address designated by the Director. Any designation by the Director, however, is subject to the entity’s right under § 342(e) and (f) of the Code to designate an address at which it wishes to receive notices in chapter 7 and chapter 13 cases.