

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA
900 MARKET STREET, SUITE 201
PHILADELPHIA, PA 19107**

**CHAMBERS OF
ERIC L. FRANK
CHIEF U.S. BANKRUPTCY JUDGE**

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Date: August 16, 2017

M E M O R A N D U M

**To: Judge Eduardo C. Robreno
Chair, U.S. District Court Bankruptcy Committee**

**From: Chief Judge Eric L. Frank
U.S. Bankruptcy Court**

**Re: Proposed Amendments to Local Rules of Bankruptcy Procedure and the
Local Bankruptcy Forms**

As explained in my letter dated August 16, 2017, the purpose of this Memorandum is to provide the District Court with an “executive summary” of the proposed amendments to Local Rules of Bankruptcy Procedure (“the Local Rules,” or “the Proposed Rules” or “L.B.R.”) and the Local Bankruptcy Forms (“the Local Forms,” “the Proposed Forms” or “L.B.F.”).

The Rules and Forms Review Process

Historically, in this district, most of the local rules have originated from the efforts of the local bankruptcy bar, acting through the Eastern District of Pennsylvania Bankruptcy Conference (“the Bankruptcy Conference”). Since the early 1990's, the Bankruptcy Conference has periodically constituted a Local Rules Advisory Committee to draft local rules and amendments to local rules for submission to the Board of Bankruptcy Judges (“the BOJ”).

In late 2013, in light of the fact that there had been no comprehensive review of the bankruptcy court local rules in about twenty (20) years, (despite the significant changes in local practice brought about by electronic filing and other factors), I requested that the Bankruptcy Conference reconstitute its Local Rules Advisory Committee (“the Committee”) to engage in a full review of the local rules and local forms.

The Bankruptcy Conference honored my request. The Committee was reconstituted with twenty (20) members. The Committee was representative of all of the bankruptcy constituencies (commercial practitioners, consumer practitioners, trustees, governmental units, U.S. Trustee, Bankruptcy Court Clerk, and practitioners in both the Philadelphia and Reading vicinages). I was appointed Chair of the Committee. As he has done each time the Committee has been active, Professor Walter J. Taggart, of Villanova Law School, graciously volunteered, to serve as the Reporter to the Committee.

Over a more than three (3) year period, the Committee studied the local rules and forms that affect local bankruptcy practice and drafted and debated various potential amendments amendments.

The review process was extremely deliberative. It involved eight (8) stages, *including publication and solicitation of informal public comment.*

- (1) Meetings of the full Committee to review the rules and forms and identify potential amendments.
- (2) Meetings of three (3) subcommittees to further consider the potential amendments identified by the full Committee and to draft proposed amendments.
- (3) A second round of full Committee meetings to consider, revise and adopt the proposed amendments as drafted by the three (3) subcommittees.
- (4) A series of meetings by another subcommittee -- the Style Subcommittee -- to harmonize the drafts of the three (3) prior subcommittees, as tentatively adopted by the full Committee, and to make stylistic changes.
- (5) Full Committee review of the Style Subcommittee's proposed revisions prior to informal public comment.
- (6) Informal public comment.¹

¹ Informal public comment was solicited by direct e-mail request to the bankruptcy bar (i.e., the members of the Eastern District of Pennsylvania Bankruptcy Conference). In addition, comment from the general public was solicited by notice posted on the bankruptcy court's website. This occurred in May and June 2017.

There was minimal comment regarding the Local Rules. Most of the comments were directed to the proposed Local Form Chapter 13 plan that the Committee is recommending be adopted pursuant to proposed Fed. R. Bankr. P. 3015.1 (which will be effective December 1, 2017).

The comments received resulted in some minor, technical edits to the Local Rules and the Local Form Chapter 13 Plan.

- (7) Style Committee consideration of the public comments received and proposed further (and proposed final) revisions to the draft rules and forms.
- (8) Final consideration of the redrafted rules and forms by the full Committee (which adopted to Style Committee's recommendations without amendment).

Following this process, the Committee submitted its proposals to the BOJ. The BOJ adopted the Committee's proposals and has requested that the rules and forms be promulgated by the District Court.

Overview

Presently, there are 72 local rules and 11 Local Forms, embedded in the rules. If the proposed amendments are adopted, there will be 114 Local Rules and 15 Local Forms. For ease of reference, the Local Forms are being separated from the Local Rules into a separate document.

The proposed increase in the number of rules and forms are attributable to several factors:

- (1) A number of Rules were restyled into shorter rules with the content moved to new, adjacent rules;
- (2) The rules governing appellate practice were enhanced substantially; and
- (3) Several new rules were drafted to make common procedures in local practice more transparent to practitioners and the public.

Rules Most Directly Affecting Practice in the District Court

On December 1, 2014, Part VIII of the national rules governing appeals to the district court was abrogated and replaced by a new Part VIII that closely tracks many of the Federal Rules of Appellate Procedure (FRAP). The new Part VIII of the national rules was intended to make practice in the district court governing bankruptcy appeals substantially mirror appellate practice in the Court of Appeals.

Many of the 16 rules in Part VIII of the Proposed Local Rules governing appeals to the district court are based on Third Circuit's Local Appellate Rules. The subcommittee assigned Part VIII started with the premise that since the Third Circuit's Local Appellate Rules are designed to enhance practice under the FRAP, Part VIII of the Proposed Local Rules should be closely modeled on the Third Circuit's Local Appellate Rules. Having mostly the same local rules govern when a bankruptcy appeal is before both the district and the Third Circuit is strongly favored by practitioners.

In most respects, the proposed rules will not alter current practice. To a large extent, the Proposed Rules make more transparent to the practitioners the current practice.

It also is the expectation of the practitioners on the Committee and the BOJ that, to the extent that an individual District Court judge wishes to administer an appeal in a manner that varies from the Local Rules, the judge generally will have the authority to do so. For example, the District Court judge may modify the additional technical requirements of the appellate briefs that are set forth in proposed L.B.R. 8014-1(a) and 8014-2(a).

Two (2) rules that may be invoked with some regularity in the District Court are Proposed L.B.R. 8013-2 (motion to expedite appeal) and Proposed L.B.R. 8018-1 (motion for extension of time to file brief). Both of these rules have been drafted to provide a simple and flexible process for the district court to decide these common motions.

Rules Most Substantially Modifying Local Bankruptcy Practice

Set forth below is a list of the rules which are likely to most substantially modify local bankruptcy practice, along with a brief explanation of the change. These changes will be felt in the bankruptcy court and are not likely to impact appellate practice in the district court.

1. 1002-2 - increased complex case eligibility, allowing larger cases to be treated in a manner generally consistent with chapter 11 practice in Delaware
2. 2004-1 - new, more flexible and streamlined Rule 2004 examination procedure
3. 2014-1 - increased disclosure requirements for appointment of counsel to assist the court in evaluating conflicts and eligibility for appointment
4. 3007-1 - procedure for presumptive right to continuance in certain objections to proofs of claim contested matters
5. 3011-2 - new “cy pres” rule for chapter 11 cases
6. 3015-1 - local form chapter 13 plan made mandatory (opt-out of national form).²
7. 3015-2 - increased service requirements for initial chapter 13 plan, consistent with Fed. R. Bankr. P. 3015(d)

² This rule is discussed in some more detail in the next section in connection with L.B.F. 3015.1-1.

8. 4004-4 - increased disclosure requirements for dismissal of objections to chapter discharge
9. 5001-1 - assignment of cases by division taken out of local rules and instead to be treated as an internal court administrative matter
10. 5003-1 - procedure addressing documents filed under seal
11. 5005-1 - incorporation into the local the rules, with some modifications, the current standing order governing electronic filing
12. 9019-2 - mediation rules revised to provide increased flexibility regarding mediator compensation and to address confidentiality issues.

Local Forms

With the exception of L.B.F. 3015.1-1 and L.B.F. 8012-1, the modifications to the Local Forms involve only style and format changes. L.B.F. 3015.1-1 merits some further discussion.

L.B.F. 3015.1-1 is a local form chapter 13 plan. It is linked to L.B.R. 3015-1, which makes its use mandatory. The reason for this requires a brief background explanation.

At the end of this year, the national bankruptcy rules will make the use of an official chapter 13 form plan mandatory in all chapter 13 cases. See Fed. R. Bankr. P. 3015(c) (effective December 1, 2017). This is a major shift in policy and was a controversial topic in the Judicial Conference. The source of the controversy is the perhaps surprising reality that chapter 13 practice varies widely among the various bankruptcy districts, which has resulted in a variety of local form plans having been adopted in many districts. In Pennsylvania, for example, there are substantial differences in the manner in which chapter 13 cases are administered in Pittsburgh and Philadelphia and there are presently form plans in the Middle and Western Districts, but not the Eastern District.

To ameliorate local concerns regarding the use of a standard, national form chapter 13 plan, Fed. R. Bankr. P. 3015.1 also is being adopted effective December 1, 2017. Rule 3015.1 authorizes local districts to “opt out” of the national form chapter 13 plan and to enact a local rule that mandates the use of a local chapter 13 form plan in lieu of the national form chapter 13 plan.

To “opt out,” the local district must provide notice and opportunity to be heard (a requirement that will be satisfied here through the notice and comment process for the entire packet of rules and forms amendments proposed by the BOJ). The local form plan must also satisfy certain format and content requirements set forth in Fed. R. Bankr. P. 3015.1.

The Committee strongly believed that our district should invoke Fed. R. Bankr. P. 3015.1 and “opt out” of the national form chapter 13 plan. The BOJ concurs. L.B.F. 3015.1-1 has been drafted to both satisfy the “opt out” requirements of Fed. R. Bankr. P. 3015.1, as well as to include other provisions, not found in the national plan, that conform to traditional chapter 13 practice in this district. The Committee and the BOJ both believe that the use of the local form will enhance the local chapter 13 practice.

Conclusion

This Memorandum provides only a brief overview of the highlights of the proposed Local Rules and Local Forms. To fully understand the proposed amendments, both the Summaries prepared by the Committee Reporter and the Rules and Forms themselves should be consulted.

cc: Chief Judge Lawrence F. Stengel (w/encl.) (via e-mail)
Judge Cynthia M. Rufe (w/encl.) (via e-mail)
Judge Jeffrey L. Schmehl (w/encl.) (via e-mail)
Judge Stephen Raslavich (w/encl.) (via e-mail)
Judge Richard E. Fehling (w/encl.) (via e-mail)
Judge Jean K. FitzSimon (w/encl.) (via e-mail)
Judge Magdeline D. Coleman (w/encl.) (via e-mail)
Judge Ashely M. Chan (w/encl.) (via e-mail)
Kate Barkman, Clerk (w/encl.) (via e-mail)
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