

## **New Bankruptcy Rules Proposed**

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In August 2012, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States (the “Advisory Committee”) announced proposed amendments to the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Official Bankruptcy Forms. Changes have been proposed to Bankruptcy Rules 1014, 7004, 7008, 7012, 7016, 7054, 8001–8028, 9023, 9024, 9027, and 9033, and Official Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1, and 22C-2, which include the “means test” forms. Changes have also been proposed to Appellate Rule 6, concerning appeals to the federal circuit courts of appeal in bankruptcy cases.

Among the proposed amendments are changes to Bankruptcy Rules 7008, 7012, 7016, 9027, and 9033 in response to the U.S. Supreme Court’s ruling in *Stern v. Marshall*, 564 U.S. 2 (2011). In *Stern*, the Supreme Court held that a non-Article III bankruptcy judge is constitutionally prohibited from entering a final judgment on a debtor’s common-law counterclaim against a creditor, even though 28 U.S.C. § 157(b)(2)(C) specifically designates “counterclaims by the estate against persons filing claims against the estate” as being within a bankruptcy court’s “core” jurisdiction. Under the proposed amendments: (i) the terms “core” and “non-core” will be removed from Rules 7008, 7012, 9027, and 9033 (governing, respectively, pleadings, defenses and objections, removal, and proposed findings and conclusions in noncore proceedings) to avoid possible confusion in light of *Stern*; (ii) parties in all adversary proceedings will be required to state whether they consent to entry of final orders or judgment by the bankruptcy judge; and (iii) Rule 7016, which governs pre-trial procedures, will be amended to direct

bankruptcy courts to decide which course of action to pursue in adversary proceedings (e.g., to enter a final judgment or submit proposed findings of fact and conclusions of law).

According to the Advisory Committee, the amendments are not intended to take a position on the question of whether party consent is adequate to permit a bankruptcy judge to enter a final judgment in a proceeding that would otherwise fall outside the scope of the judge's adjudicatory authority. The proposed changes, the Advisory Committee wrote, are "designed to frame the question of adjudicatory authority and allow the bankruptcy judge to determine the appropriate course of action. The court must decide whether to hear and finally adjudicate the proceeding, whether to hear it and issue proposed findings and conclusions, or whether to take some other action."

The proposed rule amendments would become effective December 1, 2014, if: (i) they are approved, with or without revision, by the relevant advisory committee, the Committee on Rules of Practice and Procedure, the Judicial Conference, and the Supreme Court; and (ii) Congress does not act to defer, modify, or reject them. The revisions to the Official Bankruptcy Forms would become effective December 1, 2013, if they are approved by the rules committee and the Judicial Conference. The proposed amendments, the rules committee reports explaining the proposed changes, and other information are posted on the Judiciary's web site at <http://www.uscourts.gov/uscourts/rules/rules-published-comment.pdf>.

All comments to the proposed changes must be submitted no later than February 15, 2013.

Comments may be submitted electronically to [rules\\_comments@ao.uscourts.gov](mailto:rules_comments@ao.uscourts.gov)

or to the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Suite 7-240, Washington, D.C. 20544.