

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO
Local Rules Advisory Committee Meeting
Friday, July 25, 2003

Minutes

1. Attendees:

Jim Askew
Jim Burke
Margaret Grammer Gay (late arrival)
George M. Moore
Karla K. Poe
Kelley Skehen
Rebecca Wardlaw

2. Discussion:

(A) Jim Jacobson came to the first part of the meeting to discuss the letter from the New Mexico Attorney General's office suggesting adoption of Arizona Local Rule 2083-5 regarding tax returns. The committee had discussed this letter at the previous meeting, and had suggested we adopt it with a change from "no later than seven business days before the first day set for confirmation for the plan" to "within 60 days of the order for relief under chapter13."

(B) Continuing with review of 7000 series:

1. 7004 George suggested that there is a gap in rule 7004 (i.e. Fed. R. Civ. P. 4), that allows personal service on the debtor to be sufficient. The committee suggested a Rule 7004 as follows:

Any adversary proceeding filed against a debtor shall be served on the debtor and, by mail, the debtor's attorney of record in the bankruptcy case. See Fed. R. Civ. P. 4(e)(2).

2. 7055 Similarly, George suggested a modification to rule 7055:

The application for a default judgment shall be served on the person against whom judgment is sought and, if applicable, that person's counsel of record in the bankruptcy case.

George indicated that it would be advantageous to all for service of a notice of intent to take default (above and beyond service of a motion for default) to be required – it would serve as a wake-up call, the final chance.

Kelley indicated that the judges were now requiring that orders having an effect on the debtor be served directly on them.

Jim A. wondered if this didn't amount to adding a requirement to Rule 55.

Kelley said that she could support inclusion of a requirement that the motion itself be served on the debtor's attorney and the debtor. George indicated that this was what he wanted, and that such a provision would prevent the judges' having to consider awkward situations.

Kelley suggested a compromise: That the CPPG indicate that, on a case-by-case basis, the judges may require submission of affidavits, testimony, etc., prior to entry of a default judgment, and that the rule simply contain the requirement that the motion itself be served on the debtor's attorney and the debtor.

Further discussion resulted in consensus: That the CPPG indicate that, on a case-by-case basis, the judges may require submission of affidavits, testimony, etc., prior to entry of a default judgment, and that the rule simply contain the requirement that the motion itself be served on the *party against whom judgment is sought and that party's attorney of record in the (related) bankruptcy case.*

It was also suggested that the CPPG contain a discussion of the appropriate documents to be submitted.

George suggested a modification to rule 7055:

The application for a default judgment shall be served on the person against whom judgment is sought and, if there is one, that person's counsel of record in the bankruptcy case.

3. 7056

The committee likes the court's current local rule.

(C) Remaining tasks:

1. Jim B.'s review of other local rules revealed none in the 8000 series.
2. Start on the 9000 series at next meeting.
3. The committee will also need to review the existing local rules for changes needed and to eliminate those which will have been supplanted by the committee's recommendations.

(D) Increasing frequency of meetings:

The committee concurred in the clerk's suggestion that meeting frequency be increased to twice a month, in the hopes of having an approved set of new local rules for publication on or before January 1, 2004.

(E) Augmenting previous discussions of debtors being required to file copies of tax returns:

Kelley indicated that there was a useful provision in the Massachusetts local rules (13-9-C,

Appx. 1) which requires that the copy of the tax return be accompanied by a document which specifically sets forth the amount of either the tax due or the refund expected. Its appeal is that it amounts to a certification of the information. Jim B. indicated that he would look at it and bring copies to the next meeting.

3. Next Meeting:

The next meeting will be on Friday, August 8, 2003, at 12:00 noon, in the 2nd floor Satellite Training Room, United States Courthouse, 421 Gold Avenue SW.

K:\committees\Local Rules Advisory Committee\minutes\072503.wpd