Bankruptcy Judges Panel:

Rules, Reminders, and Requests

Friday, June 1, 2018

The Honorable Rebecca B. Connelly

Chief Judge, U.S. Bankruptcy Court for the Western District of Virginia

The Honorable Paul M. Black

Judge, U.S. Bankruptcy Court for the Western District of Virginia

Materials Outline:

I. Section 107 and Motions to Seal

I. In General/Public Access to Court Filings

a. Documents filed with the bankruptcy court are open, public records, unless such documents fall within the exceptions provided for in Bankruptcy Code section 107(b) or (c). 11 U.S.C. § 107(a); *see also In re Joyce*, 399 B.R. 382, 385 (Bankr. D. Del. 2009) ("Pursuant to 11 U.S.C. § 107(a), filing for bankruptcy is a public act and, accordingly, all papers filed in bankruptcy cases and the dockets of bankruptcy courts are public documents subject to examination by members of the public.").

i. "[C]ourts have recognized a strong presumption of public access to court records." *In re Orion Pictures Corp.*, 21 F.3d 24, 26 (2d Cir. 1994) (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597–98 (1978)).

ii. "Only the most compelling reasons justify sealing court records." *Togut v. Deutsche Bank AG, Cayman Islands Branch (In re Anthracite Capital, Inc.)*, 492 B.R. 162, 174 (Bankr. S.D.N.Y. 2016).

iii. "[F]or the Court to enter a protective order, limitation of access must not only be an appropriately responsive remedy, but also, there can be no less drastic alternative available." *In re Nunn*, 49 B.R. 963, 964 (Bankr. E.D. Va. 1985) ("Congress intended the sealing of pleadings to be the exception rather than the rule.").

iv. Cause to seal must be shown.

v. To overcome the longstanding principle that court records should be publicly accessible, the debtor must "show extraordinary circumstances and a compelling need for protection." *Anthracite Capital, Inc.*, 492 B.R. at 172; *see, e.g.*, *In re Food Mgmt. Grp., LLC*, 359 B.R. 543 (Bankr. S.D.N.Y. 2007) ("[M]ere embarrassment or harm caused to the party is insufficient to grant protection under § 107(b)(2).") (citation omitted) (collecting cases); *In re Khan*, No. BAP CC-13-1297-DPATA, 2013 WL 6645436, at *4 (B.A.P. 9th Cir. Dec. 17, 2013) (per curiam) (unpublished decision) (noting potential negative employment prospects do not warrant sealing).

b. On request of a party in interest, subsection (b)(1) requires the court to protect an entity's trade secret or confidential research, development, or commercial information. 11 U.S.C. § 107(b)(1).

    i. The court, on its own motion, may also take such protective action.

c. On request of a party in interest, subsection (b)(2) requires the court to protect a person from scandalous or defamatory matters. 11 U.S.C. § 107(b)(2).

    i. The court, on its own motion, may also take such protective action.

d. For cause, the court may protect an individual's personal information the disclosure of which "would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." 11 U.S.C. § 107(c)(1).

II. Right of Public Access Under the Common Law and the First Amendment

a. The right of public access to documents filed in the courts "is derived from two separate and independent sources: the common law and the First Amendment." *See, e.g.*, *Washington v. Buraker*, Civ. No. 3:02-CV-00106, 2015 WL 6673177, at *1 (W.D. Va. Mar. 29, 2015).

    i. "Pursuant to the procedure established by the Fourth Circuit, the Court must first determine the source of the right of access with respect to the documents at issue." *Level 3 Commc'ns, LLC v. Limelight Networks, Inc.*, 611 F. Supp. 2d 572, 576 (E.D. Va. 2009).

b. "This presumption of access [under the common law], however, can be rebutted if countervailing interests heavily outweigh the public interests in access. The trial court may weigh 'the interests advanced by the parties in light of the public interests and the duty of the courts.'" *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978)).

    i. "Ultimately, under the common law the decision whether to grant or restrict access to judicial records or documents is a matter of a district court's 'supervisory power,' and it is one 'best left to the sound discretion of the [district] court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.'" *Va. Dep't of State Police v.*

Washington Post, 386 F.3d 567 (4th Cir. 2004) (quoting *Nixon*, 435 U.S. at 598–99).

ii. "Some of the factors to be weighed in the common law balancing test 'include whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage; whether release would enhance the public's understanding of an important historical event; and whether the public has already had access to the information contained in the records.'" *Id.* at 575 (quoting *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984)).

c. "Under the First Amendment . . . the denial of access must be necessitated by a compelling government interest and narrowly tailored to serve that interest." *Rushford*, 846 F.2d at 253 (applying this higher standard derived from the First Amendment to documents filed in connection with a summary judgment motion in a civil case).

i. "It is, in any case, clear that the stronger First Amendment guarantee of public access, with its attendant requirement to weigh competing interests, applies where efforts are made to seal documents offered into evidence before a court in the course of a public jury trial." *Level 3 Commc'ns, LLC*, 611 F. Supp. 2d at 579 (noting that in addition to compelling government interests, the court should consider non-government interests including the right to a fair trial, individual privacy rights, and property rights in trade secrets).

d. In the Fourth Circuit, the court must follow certain procedural steps, which were set out in *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984). *Rushford*, 846 F.2d at 253.

i. "First, the district court must give the public adequate notice that the sealing of documents may be ordered.'" *Id.* (citing *Knight Publ'g Co.*, 743 F.2d at 234).

ii. "Second, the district court must provide interested persons 'an opportunity to object to the request before the court ma[kes] its decision.'" *Id.* at 253–54 (quoting *Knight Publ'g Co.*, 743 F.2d at 235).

iii. "Third, if the district court decides to close a hearing or seal documents, 'it must state its reasons on the record, supported by specific findings.'" *Id.* at 254 (quoting *Knight Publ'g Co.*, 743 F.2d at 234).

iv. "Finally, the court must state its reasons for rejecting alternatives to closure." *Id.* (citing *Knight Publ'g Co.*, 743 F.2d at 235).

1. In reversing the bankruptcy court's orders sealing various documents, the U.S. District Court for the Western District of North Carolina noted that "the bankruptcy court was required to 'show its work' by providing sufficient information concerning the reasons such exceptional relief was merited, which would have provided a basis for meaningful appellate review by this court . . . ." *Legal Newsline v. Garlock Sealing Techs. LLC*, 518 B.R. 358, 363 (W.D.N.C. 2014) ("The Confidentiality Order relied on by the district court accomplishes none of the *Media General* objectives and shifted the presumption that favors open courts to a presumption favoring the closure of proceedings based on confidentiality designations by counsel, improvidently shifting the burden to the public and the press to disprove the contours of a need to seal which has also not been described.").

e. Courts may consider why alternatives to sealing would not provide sufficient protections for the information. *See, e.g.*, *Robbins v. Delafield (In re Williams)*, Adv. P. No. 16-07024, 2017 WL 6278764, at *1 (Bankr. W.D. Va. Dec. 8, 2017).

i. "Redacting documents to remove only protectable information is preferable to wholesale sealing. The policy favoring public access supports making public as much information as possible while still preserving confidentiality of protectable information." *In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011).

III. Confidential Research, Development, or Commercial Information

a. The most prevalent definition of "commercial information" is information which would cause "an unfair advantage to competitors by providing them information as to the commercial operations of the debtor." *See, e.g.*, *Ad Hoc Protective Comm.*

for 1 1/2% Debenture Holders v. Itel Corp. (In re Itel Corp.), 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982); *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994); *Robbins v. Tripp*, 510 B.R. 61, 66 (E.D. Va. 2014).

i. The purpose of this provision of the Bankruptcy Code is "to protect 'business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.'" *In re Georgetown Steel Co., LLC*, 306 B.R. 542, 546 (Bankr. D.S.C. 2004) (quoting *In re Global Crossing, Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003)).

ii. "Information is not commercial simply because it relates to business affairs." *Tripp*, 510 B.R. at 67 (citing *Anthracite Capital, Inc.*, 492 B.R. at 178.

b. Courts may consider the effects of disclosure of the alleged confidential commercial information when deciding whether or not to grant the motion to seal. *See, e.g.*, *Georgetown Steel Co.*, 306 B.R. at 547 (citing *In re EPIC Assocs. V*, 54 B.R. 445 (Bankr. E.D. Va. 1985); *In re Nunn*, 49 B.R. 963, 965 (Bankr. E.D. Va. 1985)).

c. "The moving party bears the burden of demonstrating that the information it is seeking to protect from public viewing is both commercial and confidential." *Robbins v. Delafield (In re Williams)*, Adv. P. No. 16-07024, 2017 WL 6278764, at *3 (Bankr. W.D. Va. Dec. 8, 2017).

IV. Defamatory Matter

a. Some courts, such as the Courts of Appeals for the First and Eighth Circuits, follow a two-prong test in determining if material is defamatory for purposes of section 107.

i. The First Circuit has held that "material that would cause a reasonable person to alter his opinion of an interested party triggers the protections of § 107(b)(2) based on a showing that either (1) the material is untrue, or (2) the material is potentially untrue and irrelevant or included within a bankruptcy filing for an improper end." *Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 14 (1st Cir. 2005).

1. The U.S. Bankruptcy Court for the Eastern District of Virginia has favored this approach which emphasizes something more than just a simple finding that the materials are defamatory. *In re Gordon Props., LLC*, 536 B.R. 703, 709–11 (Bankr. E.D. Va. 2015) ("If potentially defamatory allegations were sufficient grounds for sealing court records, the publicly available court records would look like Swiss cheese.").

ii. The Eighth Circuit looks at "whether a reasonable person could alter their opinion of Defendants based on the statements therein, taking those statements in the context in which they appear" and noting "the purpose of including material in a paper filed with the court." *Neal v. Kansas City Star (In re Neal)*, 461 F.3d 1048, 1053–54 (8th Cir. 2006) (quoting *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995); *Gitto Global Corp.*, 422 F.3d at 13).

V. Scandalous Matter

a. The Ninth Circuit has taken a plain meaning approach to interpreting whether material is scandalous pursuant to section 107.

i. "Under ordinary usage, then, matter is 'scandalous' if it [is] disgraceful, offensive, shameful and the like. There is no requirement that the material be either 'untrue' or 'potentially untrue' or that it be irrelevant or included within a court filing for 'an improper end.' Because the statute is unambiguous, and does not include the glosses provided by *Gitto Global* and *Neal*, our interpretative inquiry is at an end." *Father M. v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417, 432 (9th Cir. 2011) (finding that allegations of priests sexually abusing children were "scandalous").

VI. Privacy Protection of an Individual's Information

a. Federal Rule of Bankruptcy Procedure 9037 requires redaction of certain personally identifiable information contained in filings made with the court (unless the court orders otherwise).

i. Filings with personally identifiable information may only contain: (1) the last four digits of the social-security number and taxpayer-identification number; (2) the year of the individual's birth; (3) the minor's initials; and (4) the last four digits of the financial-account number. Fed. R. Bankr. P. 9037(a).

ii. There are certain exemptions from the redaction requirement which are set forth in Federal Rule of Bankruptcy Procedure 9037(b).

iii. This redaction requirement is echoed in the instructions to the proof of claim form (Official Form 410): "Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements."

b. For cause, the court may protect an individual's personal information the disclosure of which "would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." 11 U.S.C. § 107(c)(1).

c. Only individuals may take advantage of section 107(c)(1).

d. The court may order that a filing be made under seal without the redaction. Fed. R. Bankr. P. 9037(c).

i. However, the court may later unseal the filing or order a redacted version be filed for the public record. Fed. R. Bankr. P. 9037(c).

e. The court may also simply restrict access to the offending documents and require a redacted replacement document to be filed. Fed. R. Bankr. P. 9037(d)(1); *see also In re Branch*, Case No. 14-02379-5-SWH, 2016 WL 4543770, at *5 (Bankr. E.D.N.C. Aug. 31, 2016).

f. Additionally, the court may limit or prohibit a nonparty's remote electronic access to a document. Fed. R. Bankr. P. 9037(d)(2).

g. Section 107(c) does not create a private right of action and is not a remedial statute. *See Maple v. Colonial Orthopaedics, Inc. (In re Maple)*, 434 B.R. 363, 375 (Bankr. E.D. Va. 2010).

i. The appropriate remedy is to restrict access to the offending material. *Branch*, 2016 WL 4543770, at *9.

VII. Procedure to Seal

a. The request to seal must be brought by motion or it may be brought by the court *sua sponte*. Fed. R. Bankr. P. 9018.

i. The request must be made by a party in interest.

b. Practice Pointer: "Inherent in the language of § 107(b) is the requirement that the party requesting the extraordinary relief provide the court with specific factual and legal authority demonstrating that a particular document at issue is properly classified as 'confidential' or 'scandalous.'" *Robbins v. Delafield (In re Williams)*, Adv. P. No. 16-07024, 2017 WL 6278764, at *2 (Bankr. W.D. Va. Dec. 8, 2017).

VIII. Standard

a. The question of whether or not specific information falls within one of the exceptions is a question of fact.

b. The bankruptcy court has discretion to determine what type of protection is warranted.

c. On appeal, "whether [a document] was properly sealed in accordance with 11 U.S.C. § 107[] is a mixed question of law and fact." *Robbins v. Tripp*, 510 B.R. 61, 64 (E.D. Va. 2014).

II. Motions to Restrict Access

I. It is the filer's responsibility to properly redact personally identifiable information (i.e., Social Security number, taxpayer id number, year of birth, minor's name and financial account number).

II. The Court does not review documents to ensure compliance, although you might receive a courtesy call from Clerk's Office or Chambers.

III. If you discover that personally identifiable information is contained in a document (unless waiving right to privacy protection), you must file a Motion to Restrict Access to the document/exhibit and submit an order to the Court that restricts access to the document. If redacted version not already filed, the order must include language requiring that the document will be re-filed with such information redacted.

a. If the document was scanned as one complete document, the Clerk's Office will restrict access to the entire document and the entire document will need to be re-filed.
b. If the document was scanned in multiple batches and such information is included in only one part of the docket entry, the Clerk's Office can restrict access to that particular exhibit and only that exhibit will need to be re-filed.

IV. When re-filing the document with the personally identifiable information removed, use the same docket event as was used for the originally filed document and add "redacted motion filed to replace docket #__" in the white text box. However, if the document is a motion for relief or a motion to sell, choose the "amended" motion for relief or "amended" motion to sell docket event to avoid a second fee being charged and add "redacted motion filed to replace docket # __" in the white text box.

V. There is a $25.00 filing fee for Motion to Restrict Access to document; the Court may waive this fee under appropriate circumstances.

VI. Clerk's Office cannot allow access to the document to some parties and restrict access to others; the entire document/docket entry can only be restricted such that no parties have access.

VII. Form order restricting access to proof of claim is available upon request from Bankruptcy Court Clerk's Office.

VIII. The Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930 provides that the fee to reopen a closed case must not be charged to redact a record pursuant to Rule 9037 if redaction is the only reason for reopening the case.

a. In the Western District of Virginia Bankruptcy Court, if the bankruptcy case has already been closed, it is not necessary to file a motion to reopen the case for the purposes of filing such a motion to redact.

IX. If you need assistance in filing such a motion, call the Bankruptcy Court Clerk's Office.

III. Court Orders

I. Local Rule 9072-1(A): "Time for Filing: When the Court instructs a party to prepare a proposed order, the same shall be filed with the Court within ten (10) days after the conclusion of the trial, hearing, or other disposition of the matter at issue."

II. Local Rule 9072-1(C): "Endorsement: Endorsement of the order by all parties to the action is encouraged but not required. Difficulty in obtaining endorsements will not excuse the party required to file a proposed order from doing so within the time prescribed by A."

III. If a response or answer has been filed, an order disposing of the matter is expected to be endorsed by all parties that have filed a response or answer.

IV. Submitting an order to the Court does NOT remove the matter from the hearing docket. If the order is *entered* prior to the hearing, the hearing will be removed from the docket.

V. The chapter 13 trustee's endorsement is typically required for orders in chapter 13 cases.

VI. Please proofread your orders. Once the Court begins using e-orders, we anticipate returning orders with spelling or grammar errors as it will be more difficult for the Court to edit the orders as they will be in pdf format.

VII. The Western District does not have the same Local Rules as the Eastern District.

VIII. If the Court order provides for actions to be completed, the order should specify the particular actions (i.e., "Mr. John Doe shall provide a copy of his 2017 federal income tax return to the chapter 13 trustee's office by May 1, 2018," *not* simply "debtor to comply with Trustee's Report."). In some cases, clients may not understand who needs to do what (some debtors do not realize they are the "debtors"), and in most cases, the Court will be unable to enforce an order when it is ambiguous.

IV. Telephone Appearances

I. Counsel wishing to appear by telephone at a hearing must request such appearance at least 24 hours in advance of such hearing, absent extraordinary circumstances. Counsel is reminded that resolution of a routine docket matter less than 24 hours prior to the hearing or mere travel distance are not extraordinary circumstances.

V. Reminders on Service of Chapter 13 Plans

I. Service of the Chapter 13 Plan pursuant to Rule 7004 may be required in certain circumstances.

II. Rule 3012: Determining the Amount of Secured and Priority Claims

a. No separate motion is required in order to bifurcate a secured claim under 506(a); the Plan itself may accomplish the bifurcation.

b. Service of a plan seeking to determine the allowed amount of a secured claim, including a valuation motion, must be made in accordance with Rule 7004.

c. Reminder: Determination of the amount that a claim is entitled to priority (section 507) may be made ***only*** by motion or in a claim objection, not through the plan.

III. Rule 4003(d)

a. A proceeding to void a lien pursuant to section 522(f) may be made through a Chapter 13 Plan.

i. NB: The Official Form Plan provisions disclose values and the elements necessary to meet the statutory requirements of section 522(f).

b. Service on the affected creditor must be made in accordance with Rule 7004.

VI. Highlights of 2017 Local Rule Amendments

I. Filing of Schedules and Statements

a. Local Rule 1007-1: "In the event that schedules and statements are not filed with the petition in a voluntary case, they shall be filed within fourteen (14) days thereafter, unless a motion to extend the time for filing is received prior to the expiration of the fourteen (14) days.

Any motion to extend time to file schedules will not be granted without the consent of the Trustee or hearing held prior to the first date set for the meeting of creditors under 11 U.S.C. § 341(a). . . . "

II. Chapter 13–Plan

a. Local Rule 3015-1(A)(2) requires the use of Official Form 113 (Chapter 13 Plan).

b. Local Rule 3015-1(B): "The debtor(s) shall distribute a copy of the plan to all creditors, the standing trustee, and other interested parties and provide the Court with proof of service of the same. If the plan contains (i) a request under section 522(f) to avoid a lien or other transfer of property exempt under the Code or (ii) a request to determine the amount of a secured claim, the certificate of service shall certify that the plan was served on the affected creditors in the manner provided for by Rule 7004 for service of a summons and complaint."

c. Local Rule 3015-2(D) also provides that an amended plan must also be served on affected creditors in the manner provided for by Rule 7004 for service of a summons and complaint if the amended plan contains (i) a request under section 522(f) to avoid a lien or other transfer of property exempt under the Code or (ii) a request to determine the amount of a secured claim.

d. Local Rule 3015-2(A)(1) requires objections to amended plans that are filed 35 or more days prior to confirmation to be filed at least 7 days in advance of the confirmation hearing.

III. Pre-Confirmation Adequate Protection Payments

a. Local Rule 4001-2(B) now provides that: "[u]nless the plan provides otherwise in Part 8 or the Court orders otherwise, the amounts for adequate protection for holders of allowed secured claims secured by purchase money security interest in personal property . . . shall be the amounts to be disbursed under Parts 3.2 or 3.3 of the plan."

IV. Sale of Property, Refinance, Loan Modification and Incurrence of Debt

a. Local Rule 6004-3(A) provides that a debtor seeking approval for the sale or refinance of real property or approval of a loan modification agreement must, at a minimum, attach to the application "the proposed sale contract, proposed refinancing agreement, or proposed loan modification agreement."

b. Local Rule 6004-3(D) now provides that the debtor "shall not voluntarily incur additional indebtedness exceeding the cumulative total of $15,000 principal and interest during the term of this Plan, either unsecured or secured, except upon approval of the Court after notice to the Trustee, any creditor who has filed a request for notice, and other creditors to the extent required by the Local Rules of this Court."

VII. Amendments to the Federal Rules Concerning Electronic Filing and Service Which Will (Most Likely) Become Effective December 1, 2018

I. General

a. The Standing Committee on Rules of Practice and Procedure, in conjunction with the advisory committees, examined possible rules mandating electronic filing and service in civil cases.

b. These discussions led to the proposal of amendments to Appellate Rules 25 and 26, Bankruptcy Rules 5005 and 8011, Civil Rule 5, and Criminal Rules 45 and 49.

II. Bankruptcy Rules 5005 and 8011

a. Proposed Bankruptcy Rule 5005(a)(2)(A) mandates electronic filings by persons represented by counsel, unless for good cause or a local rule allows or requires nonelectronic filing.
    i. According to the Committee Note, "[p]aper filing must be allowed for good cause."
    ii. Unrepresented persons, pursuant to proposed Bankruptcy Rule 5005(a)(2)(B)(ii), will only be required to file electronically if the court so orders.
b. Proposed Rule 5005(a)(2)(C) clarifies that "[a] filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature."
    i. This provision is echoed in a proposed amendment to Bankruptcy Rule 8011(e).
c. Proposed Rule 8011(c)(2) provides that electronic service may be made by sending the document to a registered user through the court's electronic-filing system or by another electronic means consented to by the party in writing.
    i. "Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served," pursuant to proposed Bankruptcy Rule 8011(c)(3).

III. Civil Rule 5

a. Currently, Civil Rule 5(b)(2)(E) provides that electronic service of a document is effective only if the recipient has consented to such service in writing.
    i. The amendment will eliminate that requirement for service made through the court's electronic filing system on registered users of that system.
    ii. If the recipient consents in writing, service may be made by other electronic means.
b. Civil Rule 5(d)(3)(A) will be amended to establish a uniform national rule that mandates electronic filings by persons represented by counsel, unless for good cause or a local rule allows or requires nonelectronic filing.
    i. Pursuant to amendments to Civil Rule 5(d)(3)(B), courts still have discretion to allow electronic filing for pro se filers.

c. Amendments to Civil Rule 5(d)(3)(C) establish a national signature provision for papers filed electronically; that is, a person's name on a signature block on a document filed with that individual's electronic filing account constitutes that person's signature.

d. Amendments to Civil Rule 5(d)(1) will clarify that no certificate of service is necessary when a paper is served by filing with the Court's electronic system.

   i. The system itself creates the record of service.

   ii. For documents filed with the court but not served through the electronic filing system, a certificate of service must be filed either with the document or within a reasonable time after service.

IV. Appellate Rules 25 and 26

a. Appellate Rule 25(a)(2)(B) requires electronic filings by persons represented by counsel, unless for good cause or a local rule allows or requires nonelectronic filing.

b. Proposed Appellate Rule 25(c)(2) addresses electronic service through the court's electronic filing system or by other electronic means that the recipient has consented to in writing.

c. Proposed Appellate Rule 25(a)(2)(B)(iii) establishes same signature rule as proposed Civil Rule (d)(3)(C).

VII. Select Pending Amendments to the Federal Rules of Bankruptcy Procedure and New Rule Which Will (Most Likely) Become Effective December 1, 2018

I. Bankruptcy Rule 3002.1

a. Bankruptcy Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence) applies to home mortgage claims in chapter 13 cases.

b. Subdivisions (b) and (e) have been amended to accomplish three major items:

   i. Creating flexibility regarding a notice of payment change for home equity lines of credit (adding "If the claim arises from a home-equity line of credit, this requirement may be modified by court order.");

   ii. Establishing a procedure for objecting to a notice of payment change through the addition of new subdivision (b)(2); and

iii. Expanding the category of parties who can seek a determination of fees, expenses, and charges that are owed at the end of the case (by changing "the debtor or trustee" to "a party in interest").

II. Bankruptcy Rules 7062, 8007, 8010, 8021, and 9025

a. These rules are being amended to conform with pending Civil Rules 62 and 65.1.

i. These amendments modernize the terminology "supersedeas bond" and "surety" by instead using "bond or other security."

ii. Amended Civil Rules 62 and 65.1 will lengthen the period of the automatic stay of judgments to 30 days. Bankruptcy Rule 7062, however, is being amended to retain the 14 day time period applicable in adversary proceedings while still incorporating Civil Rule 62. Accordingly, the 14-day deadline for post-judgment motions will remain consistent with the amended rules.

III. New Rule 8018.1

a. This new rule will authorize the district court to treat the bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determines that the bankruptcy court lacked constitutional authority to enter a final judgment.

i. This would eliminate the need to remand an appeal to the bankruptcy court merely to recharacterize the judgment as proposed findings and conclusions.