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From the Bankruptcy Courts

*Alan N. Resnick**

LOCAL BANKRUPTCY COURT RULES AND PROCEDURES: NEEDED RELIEF FOR THE NATIONAL PRACTITIONER

The Federal Rules of Bankruptcy Procedure, promulgated and amended from time to time by the Supreme Court in accordance with the Rules Enabling Act,¹ provide a uniform body of rules governing procedure in all bankruptcy cases. Official Bankruptcy Forms, promulgated by the Judicial Conference of the United States in accordance with Bankruptcy Rule 9009, also provide a degree of national uniformity. Although this uniformity is beneficial to practitioners who appear in bankruptcy courts in numerous districts, there are variations in local practice and custom that also must be learned when appearing in a unfamiliar district.

A complaint frequently voiced by bankruptcy lawyers with a busy national practice is that local court rules governing particular proce-

dural matters or imposing form requirements are often difficult to locate. And, even after local rules have been found and read, practitioners are often surprised by additional "chambers rules" or "standing orders" of the particular judge before whom the lawyer is appearing.

The good news is that relief is on the way. The national rule that governs local rules, i.e., Bankruptcy Rule 9029 ("Local Bankruptcy Rules"), is undergoing significant changes that are designed, among other things, to help practitioners locate applicable local rules and to protect them from sanctions or other adverse consequences that may result from unknowing violations of standing orders and chambers rules.

The current version of Rule 9029 reads as follows:

Rule 9029: Local Bankruptcy Rules

Each district court by action of a majority of the judges thereof may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are not inconsistent with these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R. Civ. P. governs the

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¹ 28 USC § 2075.

procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R. Civ. P., to make rules of practice and procedure which are not inconsistent with these rules and which do not prohibit or limit the use of the Official Forms. In all cases not provided for by rule, the court may regulate its practice in any manner not inconsistent with the Official Forms or with these rules or those of the district in which the court acts.

The U.S. Supreme Court recently promulgated several amendments to Bankruptcy Rule 9029—consistent with similar changes to the analogous Federal Rule of Appellate Procedure, Federal Rule of Civil Procedure, and Federal Rule of Criminal Procedure²—that, absent congressional action to block them, will become effective on December 1, 1995.³

Uniform Local Rule Numbers

Bankruptcy Rule 9029, as amended, will provide that local court rules “must conform to any uniform numbering system prescribed by the Judicial Conference of the United States.” The purpose of this amendment is to assist prac-

tioners in locating local rules dealing with a particular topic. Most notably, a uniform numbering system will greatly enhance computerized research capability.

In anticipation of these amendments, the Advisory Committee on Bankruptcy Rules of the Judicial Conference and the Bankruptcy Judges Division of the Administrative Office of the United States Courts have developed a draft of a local rule numbering system that, to the extent possible, is based on the four-digit numbers used in the Federal Rules of Bankruptcy Procedure. For example, Bankruptcy Rule 2014 governs the employment of attorneys and other professional persons. The preliminary draft of uniform local rule numbers contains Local Bankruptcy Rule 2014-1 to govern local rules that relate to the employment of professionals. If there is no related national rule dealing with the topic that may be the subject of a local rule, the uniform number assigned to that topic would correspond to the part of the national rules to which it is most closely related but without being tied to any existing national rule. For example, since there is no national rule dealing with the admission of attorneys to practice in the court, the uniform local rule number assigned to this topic in the preliminary draft is Local Bankruptcy Rule 2090-1 (Part II of the Bankruptcy Rules covers, among other topics, attorneys and accountants, and there is no Bankruptcy Rule 2090).

² See Rule 47 of the Federal Rules of Appellate Procedure, Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the the Federal Rules of Criminal Procedure.

³ Similar amendments to Bankruptcy Rule 8018, which govern local rules of district courts and bankruptcy appellate panels that relate to appeals from bankruptcy court orders and judgments, also were promulgated by the Supreme Court.

The preliminary draft of the local rule numbering system also indicates that the particular district is to be identified in the citation, so that a local rule in the Eastern District of Virginia relating to the employment of professionals may be cited as "E.D.Va. LBR 2014-1."

A preliminary draft of this local rule numbering system was circulated for comment in 1994 and early 1995 and was adjusted in response to the suggestions received. This numbering system, together with uniform numbering systems for district court local rules governing civil and criminal cases and for circuit court local rules governing appeals, is likely to be presented to the Judicial Conference's Standing Committee on Rules of Practice and Procedure in January, and, if approved, to the Judicial Conference for promulgation in March 1996. If promulgated, courts will begin to conform their local rules to these uniform numbering systems. Given the time-consuming efforts required to change local rule numbers, it is likely that conforming all local rules to any new numbering system will not be achieved until at least the end of 1996.

Local Rules Relating to Form

Many local court rules require that certain papers conform to specified forms unique to that district. To protect parties and lawyers from inadvertent violations of these rules, the amendments to Bankruptcy Rule 9029 also would add the following

sentence: "A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement."

For example, under the amendment, a party would not be deprived of a right to a jury trial solely because its attorney, unaware of—or forgetting—a local rule directing that jury demands be noted in the caption of the case, includes a jury demand only in the body of the pleading. However, this protection for unknowing parties and lawyers is narrow, covering only violations that are not willful and only those involving local rules directed to matters of form. The court's power to impose penalties upon a party if it or its attorney stubbornly or repeatedly violates a local rule involving a matter of form is not affected by this change.

Standing Orders and Chambers Rules

The amendments to Bankruptcy Rule 9029 also will add the following new subdivision:

(b) *Procedure When There is No Controlling Law.* A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been fur-

nished in the particular case with actual notice of the requirement.

Although this subdivision recognizes a bankruptcy judge's flexibility in regulating practice by internal operating procedures, standing orders, or chambers rules when there is no controlling statute, national rule, Official Form, or local court rule, it also recognizes that such regulations may create problems for lawyers and parties who are unaware of them. Anecdotes of lawyers blindsided by such directives of a particular judge—never incorporated into a local court rule—are not uncommon. In fact, it is sometimes difficult for lawyers to obtain copies of a judge's internal operating procedures, standing orders, or chambers rules.

These amendments to Bankruptcy Rule 9029 disapprove imposing any sanction or other disadvantage on a person for noncompliance with an internal judge-made directive that is not contained in a local court rule, unless the alleged violator has been furnished in a particular case with actual notice of the requirement. There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular judge unless the party or attorney has actual notice of those require-

ments. As the Advisory Committee Note to the proposed amendment states, "[f]urnishing litigants with a copy outlining the judge's practices—or attaching instructions to a notice setting a case for conference or trial—would suffice to give actual notice, as would an order in a case specifically adopting by reference a judge's standing order and indicating how copies can be obtained."

Conclusion

The amendments to Bankruptcy Rule 9029 that were promulgated by the Supreme Court and that, in the absence of congressional action to block them, will become effective on December 1, 1995 and will provide important protection for lawyers practicing in an unfamiliar district. A uniform local rule numbering system—when put into effect—will make it much easier to locate applicable local rules. A non-willful failure to comply with a form requirement imposed by a local rule will no longer cause a party to lose rights. Finally, noncompliance with a judge's-made internal operating procedure—whether in the form of a standing order or chambers rule—will not result in a sanction or other disadvantage unless it is included in a or local court rule or the alleged violator has been furnished with actual notice of it in the particular case.