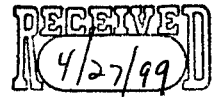


SCOTT WILLIAM DALES

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99-BK-D

April 23, 1999

Mr. Peter G. McCabe
Secretary of the Committee
on Rules of Practice and Procedure
Administrative Office of
the United States Courts
Washington, D.C. 20544

Re: Proposed Amendment to Federal Rules of Bankruptcy Procedure

Dear Mr. McCabe:

I understand that the Committee on Rules of Practice and Procedure is in the process of revising the Federal Rules of Bankruptcy Procedure. I am writing to propose that the Committee consider amending the Rules to incorporate Rule 4.1(a)¹ of the Federal Rules of Civil Procedure, or adopt a similar rule in Bankruptcy. As presently drafted, the Federal Rules of Bankruptcy Procedure do not incorporate this rule. See Fed. R. Bankr. P. 7004(a).

The purpose of my proposal is to provide express authority in the Rules for permitting United States Bankruptcy Judges to direct the United States Marshal or some other person "specially appointed" to serve writs of execution and other process, other than summonses and complaints. In my view, notwithstanding Fed. R. Bankr. P. 7069 and 28 U.S.C. § 566, courts and practitioners are confused about the nuts and bolts procedures for enforcing judgments of the Bankruptcy Courts. There is also a judicial reluctance to direct executive officers (either federal or state officials) to execute process. See, e.g., Potomac Leasing Co. v. Uriarte, 126 F.R.D. 526 (S.D. Tex. 1988) (refusing to compel sheriff to execute federal writ). Courts exercising civil jurisdiction are well aware of the many demands that the criminal process places upon the U.S. Marshals Service - demands that may prompt a busy

¹The subject matter of Fed. R. Civ. P. 4.1(b) is already addressed elsewhere in the Bankruptcy Rules. See Fed. R. Bankr. P. 7004(d) & 9020.

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Marshal to refuse to execute process. See, e.g., Apostolic Pentecostal Church v. Colbert, 173 F.R.D. 199 (E.D. Mich. 1997). Bankruptcy judges may be especially reluctant to impose upon the local Marshal, given their status as Article I judges.

If Fed. R. Civ. P. 4.1(a) were incorporated into the Bankruptcy Rules, the court would have the flexibility to appoint the Marshal to serve process in districts where this is feasible, or other qualified persons where local conditions warrant. These other qualified persons need not be state officials. In this way, the amendment would promote comity with various federal and state officials, while accommodating the successful litigant's right to prompt enforcement of Bankruptcy Court judgments.

Although incorporating Rule 4.1(a) into Part VII of the Bankruptcy Rules would resolve much of the confusion that arises post-judgment in adversary proceedings, I believe that the amendment should be located in Part IX, because "judgments," as defined in Fed. R. Bankr. P. 9001(7), may arise in contested matters, as well as adversary proceedings or, assuming the present amendments are approved, administrative proceedings. For example, if the court imposes sanctions under Fed. R. Bankr. P. 9011 in a contested matter, the prevailing party may find it necessary to enforce the order against a recalcitrant party or attorney, by levy or through some other post-judgment procedure. In addition, an order holding a party in civil contempt under Fed. R. Bankr. P. 9020 may also impose compensatory obligations to be enforced as a judgment. The point is, the prevailing party's need for executive assistance is not limited to adversary proceedings. Given that the court may make one or more Rules of Part VII applicable in contested matters or in the proposed administrative proceedings, locating the language of Fed. R. Civ. P. 4.1(a) within Part IX is not absolutely necessary, but it would be expedient. See Fed. R. Bankr. P. 9014; Proposed Fed. R. Bankr. P. 9014(1) (Draft of Aug. 1998).

I appreciate your consideration of this letter, and would be pleased to learn your thoughts on the matter.

Very truly yours,



Scott W. Dales

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ANTHONY J. SCIRICA
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W. EUGENE DAVIS
CRIMINAL RULES

FERN M. SMITH
EVIDENCE RULES

August 5, 1999

Mr. Scott William Dales
817 Cadillac Drive SE
Grand Rapids, Michigan 49506-3307

Dear Mr. Dales:

Thank you for your suggestion to incorporate the substance of Civil Rule 4.1(a) into Part IX of the Bankruptcy Rules. A copy of your letter was sent to the chair and reporter of the Advisory Committee on Bankruptcy Rules for their consideration.

We welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,



Peter G. McCabe
Secretary

cc: Honorable Adrian G. Duplantier
Professor Alan N. Resnick
Professor Jeffrey W. Morris