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04/13/2009 12:29 PM

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cc

Subject: Judicial Conference Bankruptcy Committee/Long-Range
Planning Subcommittee Meeting; June 2, 2009; Sundance,
Utah

An earlier Memorandum solicited the identification of relevant issues for potential study by the Subcommittee on Long-Range Planning.

I respectfully submit the following issue for possible consideration by this Subcommittee within the context of long-range planning. Should Fed. R. Bankr. P. 9031 be amended to eliminate its prohibition on the authority of the United States district judges and bankruptcy judges to appoint special masters in rare and unusually complex cases and proceedings under the Bankruptcy Code and that the Federal Rules of Bankruptcy Procedure instead expressly provide for such appointments, akin to the procedures established in Fed. R. Civ. P. 53 for rare and unusually complex litigation in the district court. Utilization of a special master in such unusually complex and rare civil actions could be an effective case management tool to help accomplish the judicial goal set forth in Fed. R. Bankr. P. 1001: "to secure the just, speedy, and inexpensive determination of every case and proceeding."

Rule 9031 of the Federal Rules of Bankruptcy Procedure could be amended to provide as follows:

- Rule 53 of F. R. Civ. P. applies in cases under the Code except for paragraph (h).

(It is noted for convenience purposes that Rule 53(h) addresses the appointment of a magistrate judge. It is NOT contemplated here that bankruptcy judges should or would have the authority to appoint a magistrate judge.)

Or, Fed. R. Bankr. P. 9031 could be eliminated or abrogated and a new Fed. R. Bankr. P. 7053 could be promulgated in accordance with 28 U.S.C. section 2075 to expressly provide that:

- Rule 53 F. R. Civ. P. applies in adversary proceedings except for paragraph (h).
- Also, Fed. R. Bankr. P. 9014(c) could be amended to include and adopt newly created Rule 7053 in contested matters.

The accompanying two articles provide more detailed background information and also justification regarding the possible long-range planning study of this subject matter.

I look forward to attending the Subcommittee meeting and appreciate having received an invitation.

David S. Kennedy



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