

Proposed amendments to Bankruptcy Rule 7008, 9027, and 9033, and a proposed new Bankruptcy Rule 7008.1

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Judges Carol A. Doyle, Bruce W. Black, and I submit the following proposed changes to the Bankruptcy Rules. These are intended to address the Supreme Court's decision in *Stern v. Marshall* by creating a "negative notice" form of consent procedure. (The proposed Rule 7008.1 below is modeled after on Rule 38 of the Rules Civil Procedure.)

1. Rule 7008 would be amended to state in its entirety: "Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) must also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending."

2. A new Rule 7008.1 would be adopted that would provide:

Rule 7008.1 Right to Judgment by the District Court

(a) Right Preserved. In any adversary proceeding filed in the bankruptcy court, the right to judgment by the district court established by Article III of the Constitution is preserved to the parties.

(b) Demand. To demand judgment by the District Court on any claim in an adversary proceeding --

(1) a plaintiff, or a defendant filing a counterclaim, must state the demand in the allegation of jurisdiction required by Rule 7008 in the initial pleading asserting the claim; and

(2) any answering party must state the demand in the initial answer to the pleading asserting the claim.

Any pleading that includes a demand for judgment by the District Court must note the demand in the caption.

(c) Waiver; withdrawal. A party waives judgment by the District Court unless a demand is made as specified in paragraph (b). A demand by a plaintiff or defendant filing a counterclaim may be withdrawn only if the other parties consent.

(d) Objection to a demand. Any party may, by motion, object to a demand for judgment by the district court on any claim on the ground (1) that the claim is not one as to which there is a right to judgment by the District Court under Article III of the Constitution, or (2) that the election was not made as specified in paragraph (b). The bankruptcy court may also raise an objection independently. The bankruptcy court may determine, after notice and hearing, that the demand is not effective.

3. Rule 9033(a) would be amended to delete the word "non-core" and to change "shall" to "must." The amended provision would then provide: "In proceedings heard pursuant to 28 U.S.C. § 157(c)(1), the bankruptcy judge must file proposed findings of fact and conclusions of law."

4. Rule 9027 would be amended in several respects.

First, Rule 9027(a)(1) would have a period after the word "remove" in the second sentence, and the rest of the provision beginning with the word "contain" would be deleted.

Second, a new Rule 9027(a)(4) would be added that would provide: "To demand judgment by the District Court on any claim sought to be removed, the notice must state the demand in the text and in the heading. The party filing the notice waives judgment by the District Court unless the demand is made. The party filing the notice may withdraw a demand only with the consent of all other parties to the removed claim or cause of action."

Third, Rule 9027(e)(3) would be amended to provide: "To demand judgment by the District Court on any claim or cause of action sought to be removed, any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, must file a demand for such judgment.

The demand must be signed pursuant to Rule 9011 and must be filed not later than 14 days after the filing of the notice of removal. Any party who files a demand pursuant to this paragraph must mail a copy to every other party to the removed claim or cause of action. A party waives judgment by the District Court unless such a demand is made."

Fourth, a new Rule 9027(e)(4) would be added that would provide: "Objection to a demand. Any party to the removed claim or cause of action may, by motion, object to a demand for judgment by the district court on any claim on the ground (1) that the claim is not one as to which there is a right to judgment by the District Court under Article III of the Constitution, or (2) that the demand was not made as this rule requires. The bankruptcy court may also raise an objection independently. The bankruptcy court may determine, after notice and hearing, that the demand is not effective."

Thank you for your consideration of our proposal.

Sincerely,

Ben Goldgar

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