

**Chapter 15 Provisions in the Federal Rules of Bankruptcy Procedure****Barb Sutton** to: Rules Support

05/20/2013 12:09 PM

History:

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May 20, 2013

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
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Re: Chapter 15 Provisions in the Federal Rules of Bankruptcy Procedure

Dear Committee Members:

This Court's recent experience attempting to apply the Federal Rules of Bankruptcy Procedure ("FRBP") in a Chapter 15 proceeding has prompted me to write this letter. It seems that there are, at best, some grey areas in the rules, and, at worst, some counter-productive and inconsistent provisions concerning notice of, responses to, and the hearings on Chapter 15 petitions.

FRBP 1010 requires the clerk of court to issue a summons when a party files a petition for recognition of a foreign *nonmain* proceeding (but not a foreign main proceeding). This rule also requires that the summons be served on certain parties, in accordance with FRBP 7004(a) and (b).

FRBP 2002(q) requires that the clerk of court, or some other party that the court directs, give at least 21 days notice to certain parties of the hearing on a petition for recognition of a foreign proceeding. The notice must specify "whether the petition seeks recognition as a foreign main proceeding or a foreign nonmain proceeding."

FRBP 1011(b) provides that a party responding to a petition for recognition of a foreign proceeding shall present defenses and objections to the petition "in the manner prescribed by Rule 12 F.R.Civ.P. and shall be filed and served within 21 days after service of the summons" In turn, FRBP 1011(c) provides that "[s]ervice of a motion under Rule 12(b) F.R.Civ.P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F.R.Civ.P."

Although FRBP 1010 requires the issuance of a summons only in a foreign nonmain proceeding, FRBP 1011 does not, by its language, restrict its coverage to

petitions for recognition of foreign nonmain proceedings. Therefore, FRBP 1011, as written, seems to extend the response requirements under Federal Rule of Civil Procedure (“FRCP”) 12 to petitions for recognition of foreign main proceedings and petitions for recognition of foreign nonmain proceedings. Because the time for acting under FRBP 1011 depends on service of the summons, application of FRBP 1011 does not make sense when there is no summons (as with a foreign main proceeding).

Further, there exists uncertainty and delay concerning when the court can schedule and direct notice of the hearing on a petition pursuant to FRBP 2002(q). If the court is required to wait until the expiration of the response times under FRCP 12, and a FRCP 12 motion is filed, months may pass between the filing of the petition and the date when the hearing may be set. Such a delay between the filing of the petition and the hearing runs counter to Chapter 15's purposes, which include cooperation, greater legal certainty, efficiency, and the protection and maximization of the value of the debtor's assets. See 11 U.S.C.A. §1501(a).

Finally, it is unclear why FRBP 1010 requires, in the first instance, a summons in the context of a petition for recognition of a foreign nonmain proceeding. The Advisory Committee Notes to the rule do not address the reason for the summons requirement. It is possible that the requirement for a summons should be removed from FRBP 1010, and the language of FRBP 1011 should be revised accordingly. Because FRBP 2002(q) contains no response requirements, perhaps the best solution would be to remove the Chapter 15 provisions from FRBP 1010 and 1011 and add any additional service and response provisions to FRBP 2002(q) with the summons and FRCP 12 requirements eliminated, or to place these revised Chapter 15 requirements in a new separate rule.

If you have any questions or would like to further discuss these issues, please do not hesitate to contact me.

Very truly yours,



Barry S. Schermer
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Judge

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