

# **HOW TO FOR YOUNG LAWYERS**

## **BANKRUPTCY RULE 9014**

**Presenting to  
Rocky Mountain Bankruptcy Conference**

**By**

**Jeffrey M. Schwartz**

**Gardner Carton & Douglas LLC  
191 N. Wacker Drive  
Chicago, Illinois 60606  
(312) 569-1208  
[jschwartz@gcd.com](mailto:jschwartz@gcd.com)**

**Contested Matters**  
**v.**  
**Adversary Proceedings**

**Bankruptcy Rule 9014**

The Bankruptcy Rules attempt to classify bankruptcy litigation into three separate categories (i) contested involuntary proceedings governed by Bankruptcy Rule 1018; (ii) adversary proceedings governed by Part VII of the Bankruptcy Rules; and (iii) contested matters (which do not otherwise qualify as an adversary proceeding because they are not listed in Bankruptcy Rule 7001) governed by Bankruptcy Rule 9014.<sup>1</sup>

**IS IT AN ADVERSARY PROCEEDING OR CONTESTED MATTER?**

The term “contested matter” is not defined in the Bankruptcy Code, so in order to determine whether a matter is a contested matter or an adversary proceeding one must start by looking to Bankruptcy Rule 7001 which explicitly lists all of the causes of action that qualify as adversary proceedings.

**A. Adversary Proceedings**

Bankruptcy Rule 7001 defines 10 specific actions as adversary proceedings. They are:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under sections 544(b) or 725 of the Bankruptcy Code, Bankruptcy Rule 2017, or Bankruptcy Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding in Bankruptcy Rule 4003(d);
- (3) a proceeding to obtain approval under section 363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge;
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan
- (6) a proceeding to determine the dischargeability of a debt
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

---

<sup>1</sup> The Advisory Committee Note to Bankruptcy Rule 9014 provides: “Whenever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter.” In addition to the carve-out of adversary proceedings from contested matters, contested involuntary proceedings governed by Bankruptcy Rule 1018 are also carved-out.

- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

Adversary proceedings in essence constitute separate actions connected to the underlying case, but separate to it. They resemble other federal litigation actions in that there is a plaintiff and defendant, the action is commenced by filing a complaint, service of the complain is required and an answer must be filed in order to avoid a default judgment. In addition, the vast majority of the Federal Rules of Civil Procedure apply to adversary proceedings. Part VII of the Bankruptcy Rules incorporates many of the Federal Rules of Civil Procedure including discovery rules 26 through 37. In fact, Part VII of the Bankruptcy Rules is numbered to correlate to the Federal Rules of Civil Procedure. It should be noted that while many of the Federal Rules of Civil Procedure are incorporated without change, some of the rules are modified to take into consideration the realities of a bankruptcy case. Some of the Federal Rules of Civil Procedure that are not incorporated into Part VII may be incorporated through Part V or Part IX. The list below indicates the Federal Rule of Civil Procedure, or subdivision thereof, covered by a rule in either Part V or Part IX:

<u>Federal Rules of Civil Procedure</u>	<u>Bankruptcy Rule in Part V or IX</u>
6	9006
7(b)	9013
10(a)	9004(b)
11	9011
38, 39	9015(a) – (e)
47 – 51	9015(f)
43, 44, 44.1	9017
45	9016
58	9021
59	9023
60	9024
61	9005
63	9028
77(a), (b), (c)	5001
77(d)	9022(d)
79(a) – (d)	5003
81(c)	9027
83	9029
92	9030

The Federal Rules of Civil Procedure that are incorporated in Part VII of the Bankruptcy Rules apply only to Adversary Proceedings except where a particular Bankruptcy Rule provides otherwise. The Part V and IX Bankruptcy Rules apply to all aspects of a bankruptcy case.

**B. Contested Matters**

The term “contested matter” is neither defined in the Bankruptcy Rules nor do the Bankruptcy Rules list all disputes that are to be resolved as a contested matter. The Bankruptcy Rules contemplate that any dispute which is not an adversary proceeding under Bankruptcy Rule 7001 or a contested involuntary proceeding will be resolved as a contested matter under Bankruptcy Rule 9014.

In essence, Bankruptcy Rule 9014 set forth procedures more akin to motion practice in civil litigation to resolve disputes. Contested matters (which are typically more limited issues) are usually disposed of through a summary hearing, rather than a trial. Some argue that adversary proceedings are more complex, formal and time consuming while contested matters are more routine and resolved rather expeditiously. However, often contested matters grow to be just as, if not more, complicated than adversary proceedings. Whenever there is an actual dispute before the bankruptcy court that is not covered by Bankruptcy Rule 7001, the matter should be considered a contested matter. The broad scope of what is a contested matter is reflected by Bankruptcy Rule 9014 in Part IX of the Bankruptcy Rules, subtitled “General Provisions.”

The 1983 Advisory Committee Note to Bankruptcy Rule 9014 listed the following as being among contested matters:

<b><u>Bankruptcy Rule or Code Provision</u></b>	<b><u>Description of Matter</u></b>
Rule 1017(f)(1)	dismissal or conversion of a case
Rule 3020(b)(i)	objections to confirmation of a plan
Rule 4001(A)	motions for relief from the automatic stay
Rule 4006(b)	motions to use cash collateral
Rule 4001(c)	motions to obtain credit
Code 522(f)	avoidance of liens under section
Rule 4003(d)	the assumption, rejection or assignment of executory contracts

In addition to these contested matters described in the 1985 Advisory Committee Note, other Bankruptcy Rules reference Bankruptcy Rule 9014, and thus make those matters contested matters, such as:

- The appointment of a trustee or examiner (Bankruptcy Rule 2007);
- review of acts by the United States Trustee (Bankruptcy Rule 2020);
- modification of a Chapter 12 or 13 plan after confirmation (Bankruptcy Rule 3015(g));
- use, sale or lease of real property (Bankruptcy Rule 6004);
- objection to a claim unless the objection is joined with a demand of the kind specified in Bankruptcy Rule 7001 (Bankruptcy Rule 7001);
- an objection to a disclosure statement;
- an objection to a compromised field by a trustee (Bankruptcy Rule 9019);
- a motion to extend a bar date to file a non dischargability complaint;
- objection to applications for payment of professional fees;
- motion seeking sanctions for violating the automatic stay; and
- a motion seeking substantive consolidation.

### **HOW A CONTESTED MATTER IS COMMENCE**

Under Bankruptcy Rule 9014, contested matters are usually commenced by motion and the party seeking relief must provide “reasonable notice and opportunity for hearing” to the opposing party. However, some contested matters begin when one party objects to action another party proposes to take. For example, the filing of an objection to a disclosure statement, to a fee application, to a proof of claim or to a claim of exemption, creates a dispute which becomes a contested matter. In addition, a motion to sell property of the estate does not necessarily commence an adversary proceeding. A contested matter arises if a party objects to the sale motion. Then, in accordance with Bankruptcy Rule 9014, notice and an opportunity to be heard must be afforded. In essence, in most situations, until an actual dispute is brought to the court’s attention by objecting there is no contested matter.

The Bankruptcy Rules do not require the moving party to serve a summons. The Bankruptcy Rules also do not require the non-moving party to file an answer to a commenced contested matter unless the bankruptcy court directs otherwise. It is important to review the applicable local rules in order to determine whether a response to a contested matter is required and when that response must be filed.

In providing notice and service of contested matters, practitioners should pay close attention to Bankruptcy Rule 7004 which also governs service of process in adversary proceedings. The first step in a contested matter is to determine whether Bankruptcy Rule 9014 requires service or just notice. Bankruptcy Rule 9014(a) provides that in a “contested matter not

otherwise governed by these rules, relief shall be requested by motion...” Bankruptcy Rule 9014(b) then states that the “motion shall be served in a manner provided for service of a summons and complaint by Rule 7004.” Practitioners should be careful to distinguish between providing notice of contested matters with providing service. For example, while notice and service can each be carried out by mail under Bankruptcy Rule 7004, service must be directed to the “attention of an officer, a managing or general agent or to any other agent authorized by appointment of law to receive service of process.” Notice on the other hand can simply be addressed to the entities name. There is also confusion on what papers in a contested matter must be served. Bankruptcy Rule 9014(b) states that only the “motion” must be served. As mentioned above, in some instances, a contested matter is commenced by an objection, not by a motion. Thus, it is unclear whether an objection must be served under Bankruptcy Rule 7004.

### **SOME RULES GOVERNING ADVERSARY PROCEEDINGS APPLY IN CONTESTED MATTERS**

Bankruptcy Rule 9014 extends some of the rules from Part VII, which governs adversary proceedings, to contested matters to ensure that all parties are afforded due process regardless of the nature of the bankruptcy litigation. Bankruptcy Rule 9014 incorporates these Part VII procedures to help parties argue and courts decide contested matters.

Some rules of discovery incorporated by Bankruptcy Rule 7026 do not commonly apply to contested matters. For example, rules of mandatory disclosure, disclosure of expert testimony, some other pretrial disclosure, and those providing for certain pre-scheduling conferences. Some argue that these rules are not applicable in contested matters because contested matters are resolved quickly and involve fairly clear or well-known facts so that these detailed discovery procedures are not necessary. Once again, it is important to review the applicable local rules to see if that particular bankruptcy court has issues a local rule making these discovery provisions applicable to contested matters. In addition, a Judge may issue an order in a specific case making these rules applicable to the case.

### **TESTIMONY OF WITNESSES**

Bankruptcy Rule 9014(d), the rule governing witness testimony in contested matters, states that courts should hear live, in-court testimony from witnesses testifying as to material factual issues. The parties may agree to resolve factual issues via affidavit. Courts can decide how they want hearings to proceed and how witnesses and whether witnesses will be examined according to their own preferences and customs.

### **CONCLUSION**

In general, adversary proceedings are generally more complex and use more of the formalities of the Federal Rules of Civil Procedure to reach conclusion than contested matters. Contested matters are designed to be dispensed with more expeditiously by the court. However, Bankruptcy Rule 9014 provides courts the flexibility to add more procedural protections when deciding contested matters. While the Bankruptcy Rules provide guidelines as to the general

rules in each of these situations, lawyers pursuing bankruptcy litigation should familiarize themselves with the local rules of the jurisdiction in which the matter is pending in order to insure that they are observing the required formalities.

CH02/ 22420999