

AMERICAN BANKRUPTCY INSTITUTE JOURNAL

The Essential Resource for Today's Busy Insolvency Professional

New Jersey Bankruptcy Rules Annotated

Written by:

Henry M. Karwowski
(ALM Media Properties LLC, 2010)

Reviewed by:

Paul J. Labov
Edwards, Angell, Palmer & Dodge; New Jersey
plabov@eapdlaw.com

Last year brought two major cultural events. For people who do not work in the bankruptcy field, the introduction of Apple Inc.'s revolutionary iPad was such an event. For the rest of us, it was the publication of *New Jersey Bankruptcy Rules Annotated*, written by **Henry M. Karwowski** (Trenk, DiPasquale, Webster, Della Fera & Sodono PC; West Orange, N.J.). If you do not practice in New Jersey bankruptcy court, you might be thinking, "Why would I want this book, and what makes it so significant?" In short, *New Jersey Bankruptcy Rules Annotated* is the best bankruptcy rules book in the country. Although its primary focus is New Jersey law, its utility extends past New Jersey and into the Third Circuit and beyond. In fact, the book is actually somehow more comprehensive than any of its competitors, including those written for a national audience.

For each Bankruptcy Rule, the text of the Rule appears, followed by the Advisory Committee Notes to the Rule. The text of the analogous New Jersey Local Bankruptcy Rule appears next, followed by the New Jersey bankruptcy judges' notes on the Local Bankruptcy Rule. What follows is an extended "Comment" section, with references to the statutes, other bankruptcy rules and local bankruptcy rules, standing orders, forms and cases related to the rule.

Take Rule 2004, for example. The text of Rule 2004 appears first, followed by the Advisory Committee Notes to the rule, followed by New Jersey Local Bankruptcy Rule 2004-1, followed by the New Jersey bankruptcy judges' comments on the local rule, followed

About the Reviewer

Paul Labov is an attorney at Edwards, Angell, Palmer & Dodge in New Jersey.

lastly by annotations identifying the statutes, rules, forms and cases relating to Rule 2004. The cases address, in clear, concise language, issues such as (1) standing to serve a Rule 2004 subpoena, (2) parties who may be compelled to appear for a Rule 2004 examination, (3) the scope of a Rule 2004 examination, (4) privileges that are applicable in a Rule 2004 examination and (5) the effect of a failure to appear for a Rule 2004 examination.

It is indeed the annotations that distinguish this book. Whereas other

substantive standards. Also, it fails to even address mandatory abstention.

Consider Rule 8005, which addresses stay pending appeal. The annotations not only address the standard for a stay pending appeal, but also comprehensively cover the concepts of constitutional, equitable and statutory mootness. Although they are not even referred to in the Rule, these concepts help to explain the rule and its purpose. Likewise, for Rule 9011, the annotations exhaustively address each subpart of the rule, as well as a court's authority to grant sanctions under its inherent power, 28 U.S.C. § 1927, and § 105(a) of the Bankruptcy Code.

The book's treatment of the purely procedural adversary proceeding rules

Suggested Reading

books contain only a limited number of short annotations, many of which cover only the rule itself, this book contains extensive annotations addressing not only the procedures set forth in the rule, but also the substantive matters to which the rule relates. Take, for example, Rule 5011, which addresses mandatory and permissive withdrawal of the reference and mandatory and permissive abstention from a proceeding. The book's annotations address not only the procedures relating to withdrawal and abstention (e.g., which court has jurisdiction to address a withdrawal motion), but also the substantive standards governing withdrawal of the reference and abstention. Cited in support are examples of New Jersey and Third Circuit cases in which courts granted a motion for withdrawal of the reference or for abstention and cases in which a court denied such a motion. The leading national rules book, in contrast, devotes only a few paragraphs to the

excels as well. Consider Rule 7008, which addresses general rules of pleading. The book contains five pages of annotations addressing topics such as (1) the standard for pleading a claim, (2) pleading upon information and belief, (3) the effect of a failure to plead a claim, (4) the effect of a failure to deny an allegation, (5) what qualifies as an affirmative defense, (6) when to raise an affirmative defense, (7) the effect of a failure to raise an affirmative defense and (8) the mistaken designation of a counterclaim as a defense. Meanwhile, the leading national rules book has about only a page of random annotations and does not even refer to the new pleading standard enunciated under the *Twombly* and *Iqbal* cases.

Consider also Rule 7015. The book has nearly five pages apportioned solely to the concept of relation back of an amended pleading. The national rules book, in contrast, refers to a single case—decided in 1993. Even though

the book cites only New Jersey and Third Circuit cases, the quality of the annotations makes the book attractive to any practitioner.

Note the length of the book. Excluding the introductory materials and the index, the book adds up to nearly 1,200 pages. The same material in the national book, meanwhile, totals only approximately 680 pages. If you are thinking that the length of the book indicates wordiness or lack of brevity, you would be wrong. Karwowski, an adjunct professor and a contributing editor of the *Journal*, writes in a succinct, clear and easily readable style. Also, the sheer number of cases listed in the table of cases underscores the time and attention to detail that he must have dedicated to the project.

As if all of this is not enough, the book also contains a section addressing the “individual motion practices” of each New Jersey bankruptcy judge. In addition, a CD offering advanced search capabilities, accompanies the book.

Needless to say, the book is a must-have for professionals practicing in cases before the New Jersey bankruptcy court, but the book’s customers should not be limited to New Jersey. At the very least, because many of the case annotations derive from Third Circuit cases, Pennsylvania and Delaware professionals will similarly find the book indispensable. Furthermore, because the annotations are so thorough, any bankruptcy professional—anywhere—would find the book useful. ■

Reprinted with permission from the ABI Journal, Vol. XXX, No. 2, March 2011.

The American Bankruptcy Institute is a multi-disciplinary, nonpartisan organization devoted to bankruptcy issues. ABI has more than 13,000 members, representing all facets of the insolvency field. For more information, visit ABI World at www.abiworld.org.