Bankruptcy Rule, Fee and Form Changes

Effective December 1, 2013

Informational Packet

Document produced and shared by the US Bankruptcy Courts of the Eastern, Northern and Western Districts of Oklahoma

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I. Introduction

On December 1, 2013, revisions to the Federal Rules of Bankruptcy Procedure, Bankruptcy Fee Schedule, and official Bankruptcy forms will take effect, unless Congress enacts legislation to reject, modify, or defer them. This informational packet is to inform you of the changes to the rules, fees, and forms. It should not be considered legal advice.

If you have any questions, or need further assistance, please contact the Southern District of Iowa Bankruptcy Clerk's Office at 515-284-6230.

II. Summary of Fee Changes

Motion to sell property free and clear of liens under 11 U.S.C. §363(f)

Item (19) of the Bankruptcy Court Miscellaneous Fee Schedule is being added; a new fee will be charged upon the filing of a motion for the sale of property free and clear of liens under 11 U.S.C. § 363(f), as follows:

(19) For filing the following motions, $176:

- To terminate, annul, modify or condition the automatic stay;
- To compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure; or
- To withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d); **or**
- **To sell property of the estate free and clear of liens under 11 U.S.C. § 363(f).**

Retrieval of file from Archives

Item (12) of the Bankruptcy Court Miscellaneous Fee Schedule has been amended to provide as follows:

For retrieval of **one box of** a record**s** from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, ~~$53~~ **$64**. **For retrievals involving multiple boxes, $39 for each additional box**.

Lack of funds

Item (13) of the Bankruptcy Court Miscellaneous Fee Schedule was amended as follows:

For ~~a check paid into the court which is returned for lack of funds~~ **any payment returned or denied for insufficient funds,** $53.

III. Summary of Proposed Rule Changes

1007(b)(7)

Current:

(7) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form. An individual debtor shall file the statement in a chapter 11 case in which § 1141(d)(3) applies.

New Proposed:

(7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition:

(A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the course, prepared as prescribed by the appropriate Official Form; and

(B) An individual debtor in a chapter 11 case shall file the statement if § 1141 (d)(3) applies.

4004(c)(1)

Current:

(1) In a chapter 7 case, on expiration of the times fixed for objecting to a discharge and or filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

New Proposed:

(1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, except that the court shall not grant the discharge if:

Current:

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7);

New Proposed:

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7);

Current:

(K) a presumption has arisen under § 524(m) that a reaffirmation agreement is an undue hardship; or

New Proposed:

(K) a presumption is in effect under § 524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or

5009(b)

Current:

(b) Notice of Failure to File Rule 1007(b)(7) Statement. If an individual debtor in a chapter 7 or 13 case has not filed the statement required by Rule 1007(b)(7) within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the statement is filed within the applicable time limit under Rule 1007(c).

New Proposed:

(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed within the applicable time limit under Rule 1007(c).

9006

Current:

(d) For Motion – Affidavits. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in

Rule 9023, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

New Proposed:

(d) MOTION PAPERS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Except as otherwise provided in Rule 9023, any written response shall be served not later than one day before the hearing, unless the court permits otherwise.

9013

Current:

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs

New Proposed:

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) The trustee or debtor in possession and on those entities specified by these rules; or
(b) The entities the court directs if these rules do not require service or specify the entities to be served.

9014

Current:

(b) Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R.Civ.P.

New Proposed:

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R.Civ.P.

IV. Changes in the Bankruptcy Forms

The new forms can be viewed at the following link:

http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx

B 3 A – Application for Individuals to Pay the Filing Fee in Installments

- Revised as part of the Forms Modernization Project.
- Also, the declaration and signature section for a non-attorney bankruptcy petition preparer has been removed.

B 3B – Application to Have the Chapter 7 Filing Fee Waived

- Revised as part of the Forms Modernization Project.
- Line 2 now directs the debtor to exclude non-cash governmental assistance.
- Also, the declaration and signature section for a non-attorney bankruptcy petition preparer has been removed.

B 6I – Schedule I: Your Income

- Revised as part of the Forms Modernization Project (therefore providing more complete and accurate responses).

B 6J – Schedule J: Your Expenses

- Revised as part of the Forms Modernization Project (therefore providing more complete and accurate responses).

B 6 – Summary (Summary of Schedules)

- Updated to reflect new line number references to Schedules I & J.

B 23 – Debtor's Certification of Completion of Instructional Course Concerning Financial Management

- Updated to reflect amendment of Rule 1007(b)(7).

B 27 – Reaffirmation Agreement Cover Sheet

- Updated to reflect new line number references to Schedules I & J.

Subpoenas – B 254, B 255, B 256, B 257 – clarified for the average person to read and understand.

Exhibit A

Effective December 1, 2013

Bankruptcy Court Miscellaneous Fee Schedule[1]

The fees included in the Bankruptcy Court Miscellaneous Fee Schedule are to be charged for services provided by the bankruptcy courts.

- The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 1, 3 and 5 when the information requested is available through remote electronic access.

- Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrators) should not be charged any fees under this schedule.

(1) For reproducing any document, $.50 per page. This fee applies to services rendered on behalf of the United States if the document requested is available through electronic access.

(2) For certification of any document, $11.
For exemplification of any document, $21.

(3) For reproduction of an audio recording of a court proceeding, $30. This fee applies to services rendered on behalf of the United States if the recording is available electronically.

(4) For filing an amendment to the debtor's schedules of creditors, lists of creditors, or mailing list, $30, except:
- The bankruptcy judge may, for good cause, waive the charge in any case.
- This fee must not be charged if -
  - the amendment is to change the address of a creditor or an attorney for a creditor listed on the schedules; or
  - the amendment is to add the name and address of an attorney for a creditor listed on the schedules.

(5) For conducting a search of the bankruptcy court records, $30 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access.

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[1] Issued in accordance with 28 U.S.C. § 1930.

Exhibit A

(6) For filing a complaint, $293, except:
- If the trustee or debtor-in-possession files the complaint, the fee must be paid only by the estate, to the extent there is an estate.
- This fee must not be charged if -
  - the debtor is the plaintiff; or
  - a child support creditor or representative files the complaint and submits the form required by § 304(g) of the Bankruptcy Reform Act of 1994.

(7) For filing any document that is not related to a pending case or proceeding, $46.

(8) Administrative fee for filing a case under Title 11 or when a motion to divide a joint case under Title 11 is filed, $46.

(9) For payment to trustees pursuant to 11 U.S.C. § 330(b)(2), a $15 fee applies in the following circumstances:
- For filing a petition under Chapter 7.
- For filing a motion to reopen a Chapter 7 case.
- For filing a motion to divide a joint Chapter 7 case.
- For filing a motion to convert a case to a Chapter 7 case.
- For filing a notice of conversion to a Chapter 7 case.

(10) In addition to any fees imposed under Item 9, above, the following fees must be collected:
- For filing a motion to convert a Chapter 12 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1208(a), $45.
- For filing a motion to convert a Chapter 13 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1307(a), $10.

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. §1930(a).

If the trustee files the motion to convert, the fee is payable only from the estate that exists prior to conversion.

If the filing fee for the chapter to which the case is requested to be converted is less than the fee paid at the commencement of the case, no refund may be provided.

(11) For filing a motion to reopen, the following fees apply:
- For filing a motion to reopen a Chapter 7 case, $245.
- For filing a motion to reopen a Chapter 9 case, $1167.
- For filing a motion to reopen a Chapter 11 case, $1167.
- For filing a motion to reopen a Chapter 12 case, $200.
- For filing a motion to reopen a Chapter 13 case, $235.
- For filing a motion to reopen a Chapter 15 case, $1167.

Exhibit A

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. § 1930(a).

The reopening fee must be charged when a case has been closed without a discharge being entered.

The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets. If payment is deferred, the fee should be waived if no additional assets are discovered.

The reopening fee must not be charged in the following situations:

- to permit a party to file a complaint to obtain a determination under Rule 4007(b); or
- when a debtor files a motion to reopen a case based upon an alleged violation of the terms of the discharge under 11 U.S.C. § 524; or
- when the reopening is to correct an administrative error.

(12) For retrieval of one box of ~~a~~ records from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, ~~$53~~ $64. For retrievals involving multiple boxes, $39 for each additional box.

(13) For ~~a check paid into the court which is returned for lack of funds~~ any payment returned or denied for insufficient funds, $53.

(14) For filing an appeal or cross appeal from a judgment, order, or decree, $293.

This fee is collected in addition to the statutory fee of $5 that is collected under 28 U.S.C. § 1930 (c) when a notice of appeal is filed.

Parties filing a joint notice of appeal should pay only one fee.

If a trustee or debtor-in-possession is the appellant, the fee must be paid only by the estate, to the extent there is an estate.

Upon notice from the court of appeals that a direct appeal or direct cross-appeal has been authorized, an additional fee of $157 must be collected.

(15) For filing a case under Chapter 15 of the Bankruptcy Code, $1167.

This fee is derived from and equal to the fee prescribed in 28 U.S.C. § 1930(a)(3) for filing a case commenced under Chapter 11 of Title 11.

Exhibit A

(16) The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(17) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

For management of registry funds invested through the Court Registry Investment System, a fee at a rate of 2.5 basis points shall be assessed from interest earnings.

(18) For a motion filed by the debtor to divide a joint case filed under 11 U.S.C. § 302, the following fees apply:

- For filing a motion to divide a joint Chapter 7 case, $245.
- For filing a motion to divide a joint Chapter 11 case, $1167.
- For filing a motion to divide a joint Chapter 12 case, $200.
- For filing a motion to divide a joint Chapter 13 case, $235.

These fees are derived from and equal to the filing fees prescribed in 28 U.S.C. § 1930(a).

(19) For filing the following motions, $176:

- To terminate, annul, modify or condition the automatic stay;
- To compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure; ~~or~~
- To withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d); or
- To sell property of the estate free and clear of liens under 11 U.S.C. § 363(f).

This fee must not be collected in the following situations:

- For a motion for relief from the co-debtor stay;
- For a stipulation for court approval of an agreement for relief from a stay; or
- For a motion filed by a child support creditor or its representative, if the form required by § 304(g) of the Bankruptcy Reform Act of 1994 is filed.

(20) For filing a transfer of claim, $25 per claim transferred.[2]

[2] This fee will be effective May 1, 2013.

Exhibit B

113th Congress, 1st Session – – – – – – – – – – – – – – House Document 113–28

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE THAT HAVE BEEN ADOPTED BY THE SUPREME COURT, PURSUANT TO 28 U.S.C. 2075

MAY 15, 2013.—Referred to the Committee on the Judiciary and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29–011 WASHINGTON : 2013

Exhibit B

Exhibit B

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 16, 2013.

Hon. JOHN A. BOEHNER,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are excerpts from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

Exhibit B

April 16, 2013

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1007, 4004, 5009, 9006, 9013, and 9014.

[See infra., pp. __ __ __.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2013, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

Exhibit B

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

* * * * *

(7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition:

(A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the course, prepared as prescribed by the appropriate Official Form; and

Exhibit B

(B) An individual debtor in a chapter 11 case shall file the statement if § 1141(d)(3) applies.

* * * * *

Rule 4004. Grant or Denial of Discharge

* * * * *

(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, except that the court shall not grant the discharge if:

(A) the debtor is not an individual;

(B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor;

Exhibit B

(C) the debtor has filed a waiver under § 727(a)(10);

(D) a motion to dismiss the case under § 707 is pending;

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending;

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending;

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

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(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption is in effect under § 524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or

(L) a motion is pending to delay discharge because the debtor has not filed with the court all tax documents required to be filed under § 521(f).

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Exhibit B

Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases

* * * * *

(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed within the applicable time limit under Rule 1007(c).

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Exhibit B

Rule 9006. Computing and Extending Time; Time for Motion Papers

* * * * *

(d) MOTION PAPERS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Except as otherwise provided in Rule 9023, any written response shall be served not later than one day before the hearing, unless the court permits otherwise.

* * * * *

Exhibit B

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) the entities the court directs if these rules do not require service or specify the entities to be served.

* * * * *

Exhibit B

Rule 9014. Contested Matters

* * * * *

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ. P.

* * * * *

Exhibit B

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE THOMAS F. HOGAN
Secretary

January 22, 2013

MEMORANDUM

To: The Chief Justice of the United States and Associate Justices of the Supreme Court

From: Judge Thomas F. Hogan Thomas F. Hogan

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 1007, 4004, 5009, 9006, 9013, and 9014 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2012 session. The Judicial Conference recommends that the amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering these proposed amendments, I am transmitting: (i) a redline version of the amendments; (ii) an excerpt from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iii) an excerpt from the Report of the Advisory Committee on the Federal Rules of Bankruptcy Procedure.

Attachments

Exhibit B

EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1007(b), 4004(c)(1), 5009(b), 9006, 9013, and 9014, [. . .] with a recommendation that they be approved and transmitted to the Judicial Conference. Except as noted below, the proposed changes were circulated to the bench, bar, and public for comment in August 2011. In all, 15 comments were submitted and the advisory committee received testimony telephonically from one interested bar association. The comments and testimony were considered by the appropriate subcommittees and in discussions at the advisory committee's Spring 2012 meeting.

Rules 1007 and 5009

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 conditioned the receipt of a discharge for individual debtors on their completing a personal financial management course, with some exceptions. Rule 1007(b) requires individual debtors to file a statement with the court certifying that they have completed the course. Official Form 23 is prescribed for this purpose. The proposed amendment to Rule 1007(b)(7) would relieve individual debtors of the obligation to file Official Form 23 if the provider of an instructional course concerning personal financial management directly notifies the court that the debtor has completed the course.

Exhibit B

The proposed amendment to Rule 5009(b) reflects the proposed amendment of Rule 1007(b)(7). Rule 5009(b) currently requires the clerk to send a warning notice to an individual debtor who has not filed Official Form 23 within 45 days after the first date set for the meeting of creditors. The proposed amendment would require the clerk to send the notice only if the course provider has not already notified the court of the debtor's completion of the course and the debtor has failed to file the statement in 45 days.

The advisory committee received five comments, three expressing support for the amendments, and two opposing them. The advisory committee carefully considered the comments and concluded that the concerns raised by the negative comments did not justify modifications to the published amendments.

Rule 4004

The proposed amendments to Rule 4004(c)(1) conform to the simultaneous amendment of Rule 1007(b)(7) and to state in more precise language other provisions of subdivision (c)(1). Rule 4004(c)(1)(H) would be amended to provide that the court must delay entering a discharge for a debtor who has not filed a certificate of completion only if the debtor was in fact required to do so under Rule 1007(b)(7).

The other two changes to Rule 4004(c)(1) are clarifications. One makes clear that the circumstances listed in the paragraph prevent the court from entering a discharge. The other specifically states that the prohibition on entering a discharge under subdivision (c)(1)(K) ceases when a presumption of undue hardship expires or the court concludes a hearing on the presumption.

Because the latter amendments would simply state more precisely the existing meaning of

Exhibit B

the provision and because the first is a conforming amendment, publication for public comment was unnecessary.

Rules 9006, 9013, and 9014

Rule 9006(d) prescribes time limits for the service of written motions and responses. The proposed amendments to this subsection draw attention to the rule's default deadlines for the service of motions and written responses by amending the title to add a reference to the "time for motion papers." This change is consistent with Civil Rule 6 and should make it easier to find the provision governing motion practice. Rule 9006(d) currently covers only the timing of serving opposing affidavits. The proposed amendments would expand the coverage of subdivision (d) to address the timing of the service of any written response to a motion. The change would make the provision as inclusive as possible to make local motion practice more consistent.

Rule 9013, which addresses the form and service of motions, is amended to provide a cross-reference to the time periods in Rule 9006(d). The amendment also calls greater attention to the default deadlines for motion practice. In addition, stylistic changes are made to Rule 9013 to add greater clarity. Rule 9014, which addresses contested matters in bankruptcy, is similarly amended to provide a cross-reference to the times under Rule 9006(d) for serving motions and responses. No comments were submitted on these amendments.

* * * * *

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference–

a. Approve the proposed amendments to Bankruptcy Rules 1007(b)(7), 4004(c)(1), 5009(b), 9006(d), 9013, and 9014, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the

Exhibit B

law; and

* * * * *

Respectfully submitted,

Mark R. Kravitz, Chair

James. M. Cole
Dean C. Colson
Roy T. Englert, Jr.
Gregory G. Garre
Neil M. Gorsuch
Marilyn L. Huff
Wallace B. Jefferson
David F. Levi
Patrick J. Schiltz
James A. Teilborg
Larry D. Thompson
Richard C. Wesley
Diane P. Wood

Exhibit B

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MARK R. KRAVITZ
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JEFFREY S. SUTTON
APPELLATE RULES

EUGENE R. WEDOFF
BANKRUPTCY RULES

DAVID G. CAMPBELL
CIVIL RULES

REENA RAGGI
CRIMINAL RULES

SIDNEY A. FITZWATER
EVIDENCE RULES

MEMORANDUM

TO: Honorable Mark R. Kravitz, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Eugene R. Wedoff, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 14, 2012

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 29 and 30, 2012, in Phoenix, Arizona.

* * * * *

Exhibit B

II. Action Items

A. Items for Final Approval

1. Amendments Published for Comment in August 2011. **The Advisory Committee recommends that the proposed rule and form amendments that are summarized below be approved and forwarded to the Judicial Conference. It recommends that the amended form take effect on December 1, 2012.** The texts of the amended rules and form are set out in Appendix A.

Action Item 1. Rules 1007(b)(7) and 5009(b) involve the obligation of individual debtors in chapters 7, 11, and 13 to complete a personal financial management course as a condition of receiving a discharge in bankruptcy. Rule 1007(b)(7) currently requires the debtor to file a "statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form." That form is Official Form 23, which requires the debtor to certify completion of an instructional course in personal financial management. Accordingly, Rule 5009(b) now requires the clerk to send notice to an individual debtor who has not filed Official Form 23 within 45 days after the first date set for the meeting of creditors. Debtors who do not file the necessary statement of completion from their course provider are not given a discharge before their cases are closed. Many of these cases are reopened later, necessitating the payment of an additional fee.

The Advisory Committee sought publication of amendments that would streamline the process of filing statements of the completion of financial management courses. The amendments remove the obligation of the debtor to file Official Form 23 if the financial management course provider has notified the court of the debtor's successful completion of the course. Rule 1007(b)(7) would be amended to authorize providers to file course completion statements directly with the court. Rule 5009(b) would be amended to direct the clerk to send notice to the debtor only if the debtor is required to file the statement and the provider has not already done so. At its June 2011 meeting, the Standing Committee approved the request for publication.

Upon publication, the Advisory Committee received five comments. Three comments expressed support for the amendments. They were submitted by Michael Shklar, Phillip Dy, and Ganna Gudkova. Two comments opposed the amendments. Jeanne E. Hovenden, an attorney in Virginia, urged that the debtor's attorney should be required to file the statement of completion. She expressed concern that allowing a financial course management provider to file the statement directly with the court may lead to a discharge even when it is not in the debtor's best interest. Because the provider is not familiar with all the circumstances of a case, the provider will not know if a particular debtor would be better served by not receiving a discharge. Raymond P. Bell, Jr., of Pennsylvania submitted a comment agreeing with Ms. Hovenden and emphasizing that the debtor's attorney or the debtor should bear responsibility for filing the statement of completion.

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The Advisory Committee did not view the concern raised by the negative comments as a substantial one. As Ms. Hovenden's comment recognized, only in rare cases would a debtor want to avoid a discharge. When those cases do arise, the debtor may decline to receive a discharge in other ways. The debtor has the option of waiving the discharge under § 727(a)(10) of the Code or failing to complete plan payments under chapter 11 or 13, which would result in denial of a discharge despite the filing of a notification of course completion by the provider.

Accordingly, the Advisory Committee voted unanimously to recommend approval of the amended rules as published.

Action Item 2. Rules 9006, 9013, and 9014 would be amended to highlight the default deadlines for the service of motions and written responses. Rule 9006, based on Civil Rule 6, contains a subsection regarding the time for service of motions. Rule 9006(d) regulates timing for any motions not addressed elsewhere in the Bankruptcy Rules or by order of the court. Unlike the civil rule, however, Rule 9006 does not indicate in its title that it addresses time periods for motions. Nor is it followed by a rule that addresses the form of motions, as is the case with the civil rule.

The Advisory Committee proposed several amendments to highlight the existence of Rule 9006(d). The title of Rule 9006 would be amended to add a reference to the "time for motion papers." This change, which is consistent with Civil Rule 6, should make it easier to find the provision governing motion practice. Coverage of subdivision (d) would be expanded to address the timing of the service of any written response to a motion (rather than only opposing affidavits as the rule currently states). This change would make the provision as inclusive as possible in order to capture differences in local motion practice. Rule 9013, which addresses the form and service of motions, would be amended to provide a cross-reference to the time periods in Rule 9006(d). This amendment is also intended to call greater attention to the default deadlines for motion practice. In addition, stylistic changes would be made to Rule 9013 to add greater clarity. Rule 9014, which addresses contested matters in bankruptcy, would similarly be amended to provide a cross-reference to the times under Rule 9006(d) for serving motions and responses.

No comment was received on these amendments. The Advisory Committee voted unanimously to recommend approval of the proposed amendments to Rules 9006, 9013, and 9014 as published.

* * * * *

2. Amendments for Which Final Approval Is Sought Without Publication. **The Advisory Committee recommends that the proposed amendments that are summarized below be approved and forwarded to the Judicial Conference. It recommends that the amended forms become effective on December 1, 2012.** Because the proposed amendments are technical

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or conforming in nature, the Committee concluded that publication for comment is not required. The texts of the amended rules and forms are set out in Appendix A.

Action Item 4. Rule 4004(c)(1) would be amended to conform to the simultaneous amendment of Rule 1007(b)(7) and to state in more precise language other provisions of the subdivision.

As discussed above, the Advisory Committee is recommending that the Standing Committee forward to the Judicial Conference an amendment to Rule 1007(b)(7) that would allow providers of courses on personal financial management to notify a bankruptcy court directly that a debtor had completed the course. Notification by the provider would relieve the debtor of the obligation to file a certificate of completion. Consistent with that change, Rule 4004(c)(1)(H) would be amended to provide that the court must delay entering a discharge for a debtor who has not filed a certificate of completion only if the debtor was in fact required to do so under Rule 1007(b)(7).

The other two changes to Rule 4004(c)(1) are clarifications. One makes clear that the circumstances listed in the paragraph prevent the court from entering a discharge. The other states specifically that the prohibition on entering a discharge under subdivision (c)(1)(K) ceases when a presumption of undue hardship expires or the court concludes a hearing on the presumption.

Because the latter amendments would simply state more precisely the existing meaning of the provision and because the first one is conforming, the Committee voted unanimously to recommend that they be approved without publication.

* * * * *

Exhibit B

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

1 **Rule 1007. Lists, Schedules, Statements, and Other**
2 **Documents; Time Limits**

3 * * * * *

4 (b) SCHEDULES, STATEMENTS, AND OTHER
5 DOCUMENTS REQUIRED.

6 * * * * *

7 (7) Unless an approved provider of an
8 instructional course concerning personal financial
9 management has notified the court that a debtor has
10 completed the course after filing the petition:

11 (A) An individual debtor in a chapter 7 or
12 chapter 13 case shall file a statement of completion of the~~a~~
13 course ~~concerning personal financial management~~, prepared

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* New material is underlined; matter to be omitted is lined through.

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14 as prescribed by the appropriate Official Form~~.~~; and

15 (B) An individual debtor in a chapter 11 case

16 shall file the statement ~~in a chapter 11 case in which~~if

17 § 1141(d)(3) applies.

18 * * * * *

Committee Note

Subdivision (b)(7) is amended to relieve an individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider notifies the court that the debtor has completed the course. Course providers approved under § 111 of the Code may be permitted to file this notification electronically with the court immediately upon the debtor's completion of the course. If the provider does not notify the court, the debtor must file the statement, prepared as prescribed by the appropriate Official Form, within the time period specified by subdivision (c).

Changes Made After Publication and Comment

No changes were made after publication and comment.

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1 **Rule 4004. Grant or Denial of Discharge**

2 * * * * *

3 (c) GRANT OF DISCHARGE.

4 (1) In a chapter 7 case, on expiration of the times
5 fixed for objecting to discharge and for filing a motion to
6 dismiss the case under Rule 1017(e), the court shall forthwith
7 grant the discharge ~~unless~~, except that the court shall not grant
8 the discharge if:

9 (A) the debtor is not an individual;

10 (B) a complaint, or a motion under
11 § 727(a)(8) or (a)(9), objecting to the discharge has been filed
12 and not decided in the debtor's favor;

13 (C) the debtor has filed a waiver under
14 § 727(a)(10);

15 (D) a motion to dismiss the case under § 707
16 is pending;

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17 (E) a motion to extend the time for filing a
18 complaint objecting to the discharge is pending;
19 (F) a motion to extend the time for filing a
20 motion to dismiss the case under Rule 1017(e)(1) is pending;
21 (G) the debtor has not paid in full the filing
22 fee prescribed by 28 U.S.C. § 1930(a) and any other fee
23 prescribed by the Judicial Conference of the United States
24 under 28 U.S.C. § 1930(b) that is payable to the clerk upon
25 the commencement of a case under the Code, unless the court
26 has waived the fees under 28 U.S.C. § 1930(f);
27 (H) the debtor has not filed with the court a
28 statement of completion of a course concerning personal
29 financial management ~~as~~ if required by Rule 1007(b)(7);
30 (I) a motion to delay or postpone discharge
31 under § 727(a)(12) is pending;
32 (J) a motion to enlarge the time to file a

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33 reaffirmation agreement under Rule 4008(a) is pending;

34 (K) a presumption ~~has arisen~~is in effect under

35 § 524(m) that a reaffirmation agreement is an undue hardship

36 and the court has not concluded a hearing on the presumption;

37 or

38 (L) a motion is pending to delay discharge~~;~~

39 because the debtor has not filed with the court all tax

40 documents required to be filed under § 521(f).

41 * * * * *

Committee Note

Subdivision (c)(1) is amended in several respects. The introductory language of paragraph (1) is revised to emphasize that the listed circumstances do not just relieve the court of the obligation to enter the discharge promptly but that they prevent the court from entering a discharge.

Subdivision (c)(1)(H) is amended to reflect the simultaneous amendment of Rule 1007(b)(7). The amendment of the latter rule relieves a debtor of the

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obligation to file a statement of completion of a course concerning personal financial management if the course provider notifies the court directly that the debtor has completed the course. Subparagraph (H) now requires postponement of the discharge when a debtor fails to file a statement of course completion only if the debtor has an obligation to file the statement.

Subdivision (c)(1)(K) is amended to make clear that the prohibition on entering a discharge due to a presumption of undue hardship under § 524(m) of the Code ceases when the presumption expires or the court concludes a hearing on the presumption.

Changes Made After Publication and Comment

Because this amendment is being made to conform to a simultaneous amendment of Rule 1007(b)(7) and is otherwise technical in nature, final approval is sought without publication.

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1 **Rule 5009. Closing Chapter 7 Liquidation, Chapter 12**
2 **Family Farmer's Debt Adjustment, Chapter**
3 **13 Individual's Debt Adjustment, and**
4 **Chapter 15 Ancillary and Cross-Border**
5 **Cases**

6 * * * * *

7 (b) NOTICE OF FAILURE TO FILE RULE
8 1007(b)(7) STATEMENT. If an individual debtor in a
9 chapter 7 or 13 case is required to ~~has not~~ file~~d the~~ a statement
10 under ~~required by~~ Rule 1007(b)(7) and fails to do so within 45
11 days after the first date set for the meeting of creditors under
12 § 341(a) of the Code, the clerk shall promptly notify the
13 debtor that the case will be closed without entry of a
14 discharge unless the required statement is filed within the
15 applicable time limit under Rule 1007(c).

16 * * * * *

Committee Note

Subdivision (b) is amended to conform to the amendment of Rule 1007(b)(7). Rule 1007(b)(7) relieves an

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individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider notifies the court that the debtor has completed the course. The clerk's duty under subdivision (b) to notify the debtor of the possible closure of the case without discharge if the statement is not timely filed therefore applies only if the course provider has not already notified the court of the debtor's completion of the course.

Changes Made After Publication and Comment

No changes were made after publication and comment.

1 **Rule 9006. Computing and Extending Time; Time for**
2 **Motion Papers**

3 * * * * *

4 (d) ~~FOR~~ MOTION~~S~~ PAPERS~~— AFFIDAVITS~~. A
5 written motion, other than one which may be heard ex parte,
6 and notice of any hearing shall be served not later than seven
7 days before the time specified for such hearing, unless a
8 different period is fixed by these rules or by order of the court.
9 Such an order may for cause shown be made on ex parte

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10 application. When a motion is supported by affidavit, the
11 affidavit shall be served with the motion. ~~and, e~~Except as
12 otherwise provided in Rule 9023, ~~opposing affidavits~~any
13 written response shall ~~may~~be served not later than one day
14 before the hearing, unless the court permits otherwise~~them to~~
15 ~~be served at some other time~~.
16 * * * * *

Committee Note

The title of this rule is amended to draw attention to the fact that it prescribes time limits for the service of motion papers. These time periods apply unless another Bankruptcy Rule or a court order, including a local rule, prescribes different time periods. Rules 9013 and 9014 should also be consulted regarding motion practice. Rule 9013 governs the form of motions and the parties who must be served. Rule 9014 prescribes the procedures applicable to contested matters, including the method of serving motions commencing contested matters and subsequent papers. Subdivision (d) is amended to apply to any written response to a motion, rather than just to opposing affidavits. The caption of the subdivision is amended to reflect this change. Other changes are stylistic.

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Changes Made After Publication and Comment

No changes were made after publication and comment.

1 **Rule 9013. Motions: Form and Service**

2 A request for an order, except when an application is
3 authorized by the rules, shall be by written motion, unless
4 made during a hearing. The motion shall state with
5 particularity the grounds therefor, and shall set forth the relief
6 or order sought. Every written motion, other than one which
7 may be considered ex parte, shall be served by the moving
8 party within the time determined under Rule 9006(d). The
9 moving party shall serve the motion on:

10 (a) the trustee or debtor in possession and on those
11 entities specified by these rules; or

12 (b) the entities the court directs if these rules do not

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13 require service or specify the entities to be served ~~if service is~~

14 ~~not required or the entities to be served are not specified by~~

15 ~~these rules, the moving party shall serve the entities the court~~

16 ~~directs~~.

17 * * * * *

Committee Note

A cross-reference to Rule 9006(d) is added to this rule to call attention to the time limits for the service of motions, supporting affidavits, and written responses to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule. The other changes are stylistic.

Changes Made After Publication and Comment

No changes were made after publication and comment.

1 **Rule 9014. Contested Matters**

2 * * * * *

3 (b) SERVICE. The motion shall be served in the

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4 manner provided for service of a summons and complaint by
5 Rule 7004 and within the time determined under
6 Rule 9006(d). Any written response to the motion shall be
7 served within the time determined under Rule 9006(d). Any
8 paper served after the motion shall be served in the manner
9 provided by Rule 5(b) F.R. Civ. P.
10 * * * * *

Committee Note

A cross-reference to Rule 9006(d) is added to subdivision (b) to call attention to the time limits for the service of motions, supporting affidavits, and written responses to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule.

Changes Made After Publication and Comment

No changes were made after publication and comment.

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