PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1017. Dismissal or Conversion of Case; Suspension

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(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER 7 CASE FOR SUBSTANTIAL ABUSE. The court may dismiss an individual debtor's case for substantial abuse under § 707(b) only on motion by the United States trustee or on the court's own motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entities as the court directs.

(1) A motion to dismiss a case for substantial abuse may be filed by the United States trustee only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed by the United States trustee before the time has expired, the court for cause extends the time for filing the motion to dismiss.

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

The United States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

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COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request filed by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under § 707(b), whether the court rules on the request before or after the expiration of the 60-day period.

Reporter's Note on Text of Rule 1017(e). The above text of Rule 1017(e) is not based on the text of the rule in effect on this date. The above text embodies amendments that have been promulgated by the Supreme Court in April 1999 and, unless Congress acts with respect to the amendments, will become effective on December 1, 1999.

Public Comment on Proposed Amendments to Rule 1017(e):

(1) Hon. Christopher M. Klein (Bankr. E.D. Cal.) asked whether Rule 1017(e)(1) permits the court to extend the time for the court to dismiss the case for substantial abuse *sua sponte*.

(2) Peter C. Fessenden, Esq. (Brunswick, Maine) supports all the proposed amendments.

GAP Report on Rule 1017(e). No changes since publication.

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

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(6) ~~hearings on all applications for compensation or reimbursement of expenses totaling in excess of $500~~ a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000;

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COMMITTEE NOTE

Paragraph(a)(6) is amended to increase the dollar amount from $500 to $1,000. The amount was last amended in 1987, when it was changed from $100 to $500. The amendment also clarifies that the notice is required only if a particular entity is requesting more than $1,000 as compensation or reimbursement of expenses. If several

professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a)(6) is required only with respect to the entities that have requested more than $1,000. If each applicant requests $1,000 or less, notice under paragraph (a)(6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than $1,000.

If a particular entity had filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds $1,000 for the purpose of applying this rule.

Public Comment on Proposed Amendments to Rule 2002(a):

(1) Hon. Arthur J. Spector (on behalf of the four bankruptcy judges in the E.D. Mich.) supports the proposed amendments.

(2) Terence H. Dunn, Clerk (D. Ore.) supports the proposed amendments.

(3) Peter C. Fessenden, Esq. (Brunswick, Maine) suggests that the $500 dollar amount be maintained. Also, "the rule should be amended to clarify that notice and opportunity for hearing on a fee application is required if the *aggregate total* fee application exceeds the threshold amount." Based on his experience as a chapter 13 trustee for over 18 years, even $500 can be a significant burden on debtors. The bankruptcy judges in Maine take seriously their responsibility to review fee applications; "inefficiency and padding are ferreted out and disallowed. Raising the level of unscrutinized fees to $1,000 may impose an unfair burden on those least able to afford it." Regardless

of the dollar amount used, he comments that the existing and proposed rules are ambiguous. Are notice and hearing escaped if the *particular request* is less than $500/$1,000, or if the *total aggregate* fees to date are less than that amount? Especially in chapter 13, counsel could "fly below radar" simply by spreading out fee requests to receive court approval without any meaningful review. Rule 2002(a)(6) should clarify that notice and opportunity for hearing are waived only if the application indicates that the total aggregate fees do not exceed the dollar limit in the rule.

GAP Report on Rule 2002(a). No changes since publication.

Rule 4003. Exemptions

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(b) ~~OBJECTIONS~~ OBJECTING TO A CLAIM OF EXEMPTIONS. ~~The trustee or any creditor may file objections~~ A party in interest may file an objection to the list of property claimed as exempt only within 30 days after ~~the conclusion of~~ the meeting of creditors held ~~pursuant to Rule 2003(a)~~ under § 341(a) is concluded or within 30 days after ~~the filing of~~ any amendment to the list or supplemental schedules is filed, whichever is later. ~~unless, within such~~

~~period, further time is granted by the court.~~ The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, ~~and to~~ the person filing the list, and the attorney for ~~such~~ that person.

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COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of this amendment is to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension if it has failed to rule on the request within the 30-day period. See In re Laurain, 113 F.3d 595 (6th Cir. 1997); Matter of Stoulig, 45 F.3d 957 (5th Cir. 1995); In re Brayshaw, 912 F.2d 1255 (10th Cir. 1990). The amendments clarify that the extension may be granted only for cause. The amendments also conform the rule to § 522(l) of the Code by recognizing that any party in interest may file an objection or request for an extension of time under this rule. Other amendments are stylistic.

Public Comment on Proposed Amendments to Rule 4003:

(1) Hon. Arthur J. Spector (on behalf of the four bankruptcy judges in the E.D. Mich.) supports the proposed amendments that will obviate the possibility of harsh results such as those created in *In re Laurain*, 113 F.3d 595 (6th Cir. 1997).
(2) Hon. Leslie Tchaikovsky (on behalf of nine bankruptcy judges of N.D. Cal.) suggests that Rule 4003(b) be further revised to clarify that an objection to an exemption is governed by Rule 9014. Also, further amend the rule to provide that the time limit for objecting to exemptions does not apply to chapter 11 cases and, in such cases, to permit the court to set a deadline.

(3) Shirley C. Arcuri, Esq., on behalf of the Local Rules Advisory Committee (Bankr. M.D. Fla.), expressed support for the proposed amendments to Rule 4003(b) that will allow trustees additional time, if warranted, to file objections to claims of exemption. Trustees are sometimes forced to file objections even if they are unsure of the merits in order to meet the 30-day time limit. Some of these are subsequently withdrawn. The amendment will allow trustees more time to determine the merits of an objection before filing it.

(4) Martha L. Davis, General Counsel, Executive Office for United States Trustees, commented that the reference to an objection to claimed exemptions filed by the "trustee or a creditor" is incomplete. Section 552(l) refers to a "party." She suggests similar language in Rule 4003(b) because the United States trustee sometimes finds it necessary to object to a debtor's claim of exemptions, particularly in chapter 11.

(5) Judy B. Calton, Esq., on behalf of the Advisory Committee of the Bankruptcy Court for the Eastern District of Michigan, expressed support for the proposed amendments to Rule 4003(b), but is concerned that the inclusion of this provision might, by negative

implication, be deemed to preclude the court from granting extensions of exclusivity or the time to assume or reject nonresidential leases if the statutory time period expires where a timely filed request for extension is pending. She suggests that similar provisions be placed in other rules with respect to such requests and/or the language permitting enlargement of time in Rule 9006(b) be strengthened.

(6) Peter C. Fessenden, Esq. (Brunswick, Maine) supports the proposed amendments.

GAP Report on Rule 4003(b). The words "trustee or creditor" were replaced by "party in interest" to conform to § 522(l) of the Bankruptcy Code which permits any party in interest to object to claimed exemptions. Style revisions also were made to the published draft.

Rule 4004. Grant or Denial of Discharge

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(c) GRANT OF DISCHARGE.

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

~~(a)~~(A) the debtor is not an individual,

~~(b)~~(B) a complaint objecting to the discharge has been filed,

~~(c)~~(C) the debtor has filed a waiver under § 727(a)(10),

~~(d)~~(D) a motion to dismiss the case under ~~pursuant to~~ Rule 1017(e) is pending,

~~(e)~~(E) a motion to extend the time for filing a complaint objecting to discharge is pending, ~~or~~

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

~~(f)~~(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.

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COMMITTEE NOTE

Subdivision (c) is amended so that a discharge will not be granted while a motion requesting an extension of time to file a motion to dismiss the case under § 707(b) is pending. Other amendments are stylistic.

Public Comment on Proposed Amendments to Rule 4004(c):

(1) Hon. Christopher M. Klein (E.D. Cal.) asks whether the court may extend the time *sua sponte*? Consider revising the rule to take into account undeserved discharges in cases that should be dismissed. There has been a problem when the debtor does not attend the meeting of creditors, which the trustee keeps continuing, and ultimately the case gets dismissed for failure to prosecute, but the discharge has been automatically entered under Rule 4004(c). Since section 349 does not provide that dismissal vacates the discharge, there is an opportunity for manipulation in which a debtor gets the benefit of a discharge without giving up nonexempt property to creditors.

(2) Peter C. Fessenden, Esq. (Brunswick, Maine) supports the proposed amendments.

GAP Report on Rule 4004(c). No changes since publication except for style revisions.

Rule 5003. Records Kept By the Clerk

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(E) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes these mailing addresses, but the clerk is not required to include in the register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to

determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

~~(e)~~ (f) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall ~~also~~ keep ~~such~~ any other books and records ~~as may be~~ required by the Director of the Administrative Office of the United States Courts.

COMMITTEE NOTE

Subdivision (e) is added to provide a source where debtors, their attorneys, and other parties may go to determine whether the United States or the state or territory in which the court is located has filed a statement designating a mailing address for notice purposes. By using the address in the register — which must be available to the public — the sender is assured that the mailing address is proper. But

the use of an address that differs from the address included in the register does not invalidate the notice if it is otherwise effective under applicable law.

The register may include a separate mailing address for each department, agency, or instrumentality of the United States or the state or territory. This rule does not require that addresses of municipalities or other local governmental units be included in the register, but the clerk may include them.

Although it is important for the register to be kept current, debtors, their attorneys, and other parties should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk must update the register, but only once each year.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular agency, department, or instrumentality of the United States or the state or territory. But if more than one address is included, the clerk is required to include information so that a person using the register could determine when each address should be used. In any event, the inclusion of more than one address for a particular department, agency, or instrumentality, does not impose on a person sending a notice the duty to send it to more than one address.

Public Comment on Proposed Amendments to Rule 5003:

(1) The bankruptcy judges and clerk of the District of South Carolina commented that the amendments will require significant administrative time and effort in the clerk's office for a product that is optional. It

would be better to permit the court to solicit from all creditors, including credit card companies and governmental units, one address for noticing purposes.

(2) Terence H. Dunn, Clerk (D. Ore.) opposes this change, which would require extensive administrative effort in the clerk's office while stating that a failure to use the address in the register does not invalidate the notice. Expansion of the electronic noticing contract for bankruptcy courts will help eliminate the need for this proposal. The increasing number of pro se debtors will negate the effect of this rule since many are not sophisticated enough to check the register. If this rule is kept, the court should maintain these records only on its PACER system rather than wasting time and money printing paper copies and mailing.

(3) Arthur J. Fried, General Counsel, Social Security Administration, opposes the proposed amendments to this rule because they provide that a debtor's failure to comply will not affect the validity of the notice if the governmental unit has notice or actual knowledge in time to participate. While this may appear to protect the debtor, in practice it may result in adverse consequences, i.e., failure to give timely notice to the appropriate component of SSA may result in the continued collection of overpayments that normally would be suspended as a result of the automatic stay. Monthly Social Security benefits may be inadvertently withheld. Notice failures also will result in added time and expense to the courts because of contempt proceedings when the stay is violated due to poor notice of the case.

(4) Shirley C. Arcuri, Esq., Local Rules Advisory Committee (Bankr. M.D. Fla.) supports the amendments to this rule because they provide certainty as to where to send notices to governmental agencies.

(5) Hon. Christopher M. Klein (Bankr. E.D. Cal.) commented that the concept of a clearinghouse for addresses is appealing, but the details raise questions. Since updated only once each year, some addresses will be obsolete. The conclusive presumption of an obsolete address raises concerns especially in an era when the Postal Service seems to be getting less efficient at forwarding mail. If the address contains an error, is the conclusive presumption operative? The burdens on clerks may be greater than anticipated. Given the opportunity for misunderstanding when something does not happen when and as anticipated, this proposal should not be adopted in its present form.

(6) The Executive Office for United States Attorneys commented that the register is a good idea, but multiple addresses for agencies are needed so that an agency can have different addresses for offices handling different types of loans. Suggests eliminating the information requirement enabling the user to determine which address is applicable. The failure to use the provided mailing address does not invalidate notice, so the purpose of this provision is unclear and its effectiveness is uncertain.

(7) Barry K. Lander, Clerk, on behalf of the Bankruptcy Clerks' Advisory Group, wrote that this rule would require extensive administrative effort by clerks' offices without a clear purpose because failure to use the specified address would not invalidate an otherwise valid notice.

(8) Peter H. Arkison, Esq. (Bellingham, WA) suggested that the register should be expanded to include local governmental units such as cities and counties.

(9) Stephen J. Csontos, Sr. Legislative Counsel, Tax Division, U.S. Department of Justice, expressed concern about the limitation that the

clerk is not obligated to list more than one address for an agency. The IRS might want to use more than one address in the future (depending on the type of proceeding) as a result of the pending reorganization of the IRS along functional lines. While most clerks will cooperate, the proposed rule would give clerks the right to deny such a request arbitrarily. Proposes language stating that "the clerk may include more than one mailing address. . ." (rather than "the clerk is not required to include more than one . . .").

(10) Karen Cordry, Esq., on behalf of Bankruptcy and Taxation Working Group, National Association of Attorneys General, suggests that action on this amendment be delayed until it is possible to assess the likelihood of new legislation, which may deal with these issues. The register is a useful concept, but the restrictions on it make it less helpful (even harmful). Opposes excluding other states and municipalities, and limiting it to one address for each agency. Updating only once each year is not sufficient (forwarding addresses are limited in time, certainly less than one year). Since the address is conclusively presumed to be the correct one, if an agency moves and notifies the debtor, the debtor may still send notices to the old address (i.e., room for abuse). It is important that it be accurate (updated) and mandatory (not optional), or it will be of little value. A properly constructed, updated, mandatory register that is on the Internet would be very useful.

(11) Peter C. Fessenden, Esq. (Brunswick, Maine) supports the proposed amendments.

GAP Report on Rule 5003. No changes since publication.