



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

April 19, 2005

LEONIDAS RALPH MECHAM
Secretary

MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT

SUBJECT: *Request to Withdraw Proposed Amendment to Bankruptcy Rule 4008*

On April 14, 2005, the House of Representatives passed the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* (S. 256), which had been passed earlier by the United States Senate. The President is expected to sign the legislation shortly. One of the Act's provisions is inconsistent with an amendment to Bankruptcy Rule 4008, which the Judicial Conference had approved in September 2004 and forwarded to the Supreme Court with a recommendation that it be approved. In light of the inconsistency and the imminent enactment of the Act, the Executive Committee, on behalf of the Judicial Conference, requests that the amendment to Bankruptcy Rule 4008 be withdrawn so that it can be recommitted for further consideration by the Committee on Rules of Practice and Procedure and its Advisory Committee on Bankruptcy Rules.

Section 203 of the Act sets forth comprehensive procedures governing reaffirmation agreements between a creditor and debtor. The section provides, among other things, that "[n]o [reaffirmation] agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge." The proposed amendment to Bankruptcy Rule 4008 also deals with reaffirmation agreements. Under amended Rule 4008, reaffirmation agreements "shall not be filed not later than 30 days after the entry of an order granting a discharge" In other words, the amended rule clearly authorizes the filing of reaffirmation agreements *after* entry of discharge, but the legislation anticipates that courts will be holding hearings on filed reaffirmation agreements *before* discharge is entered. Because the inconsistency between the proposed amendment and legislation may lead to confusion and unnecessary litigation, the Committee on Rules of Practice and Procedure recommended that the Judicial Conference seek withdrawal of the proposed amendment to Bankruptcy Rule 4008. The Executive Committee, acting on behalf of the Judicial Conference, approved the Rules Committee's recommendation at a teleconference on April 18, 2005.

/s/ Leonidas Ralph Mecham

Leonidas Ralph Mecham
Secretary

cc: Honorable David F. Levi
Honorable Thomas S. Zilly