

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

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**TO: Hon. Lee H. Rosenthal, Chair  
Standing Committee on Rules of Practice and Procedure**

**FROM: Hon. Laura Taylor Swain, Chair  
Advisory Committee on Bankruptcy Rules**

**DATE: December 11, 2007**

**RE: Report of the Advisory Committee on Bankruptcy Rules**

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on September 6-7, 2007, in Jackson, Wyoming. The Committee considered a number of issues as more fully set out in the draft of the minutes of that meeting which is attached to this report.

The Committee recommends Standing Committee approval for publication of preliminary drafts of proposed amendments to four Rules.

Information items concerning the status of previously-approved actions relating to the Bankruptcy Rules, a new Forms Modernization project, action taken after the Jackson meeting with respect to means-test forms, and changes in the membership of the Committee are set out following the action items.

## II. Action Items

- A. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1007, 1019, 4004, and 7001.

**The Advisory Committee recommends that the Standing Committee approve the following draft of proposed amendments to the Bankruptcy Rules for publication for comment.**

*1. Synopsis of Preliminary Draft of Proposed Amendments to Bankruptcy Rules.*

- a. **Rule 1007** is amended in subdivision (a) to shorten the time for the debtor to file a list of creditors after the entry of an order for relief in an involuntary case. Subdivision (c) of the rule is amended to extend the time for individual debtors in chapter 7 to file the statement of completion of a course in personal financial management.
- b. **Rule 1019** is amended by redesignating subdivision (2) as subdivision (2)(A), and adding a new subdivision (2)(B). Subdivision (2)(B) provides that a new time period to object to a claim of exemption arises when a case is converted to chapter 7 from chapter 11, 12, or 13. The new time period does not arise, however, if the conversion occurs more than one year after the first order confirming a plan, even if the plan was subsequently modified. A new objection period also does not arise if the case was previously pending under chapter 7 and the objection period had expired in the prior chapter 7 case.
- c. **Rule 4004** is amended to include a new deadline in subdivision (a) for the filing of motions (rather than complaints) under Rule 7001(b) objecting to a debtor's discharge under §§ 727(a)(8), (a)(9), and 1328(f). Subdivision (c)(1) is amended because of the proposed addition of subdivision (b) to Rule 7001. Subparagraph (c)(1)(B) directs the court not to grant a discharge if a motion or complaint objecting to discharge has been filed unless the objection has been decided in the debtor's favor. Finally, subdivision (c)(4) is added to the rule. It directs the court in chapter 11 and 13 cases to withhold the entry of the discharge if 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).
- d. **Rule 7001** is amended by adding subdivision (b) to the rule, and redesignating the text of the existing rule as subdivision (a). Subdivision (b) and the amendment to subdivision (a)(4) direct that objections to discharge under §§ 727(a)(8), (a)(9), and § 1328(f) be commenced by motion rather than by complaint. This amendment corresponds to the proposed amendment to Rule 4004.



19 or § 1328(b) of the Code.

20 \* \* \* \* \*

### COMMITTEE NOTE

Subdivision (a)(2) is amended to shorten the time for a debtor to file a list of the creditors included on the various schedules filed or to be filed in the case. This list provides the information necessary for the clerk to provide notice of the § 341 meeting of creditors in a timely manner.

Subdivision (c) is amended to provide additional time for individual debtors in chapter 7 to file the statement of completion of a course in personal financial management. This change is made in conjunction with an amendment to Rule 5009 requiring the clerk to provide notice to debtors of the consequences of not filing the statement in a timely manner.

### **Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case<sup>2</sup>**

1 When a chapter 11, chapter 12, or chapter 13 case has  
2 been converted or reconverted to a chapter 7 case:

3 \* \* \* \* \*

4 (2) *New filing periods.*

5 (A) A new time period for filing a motion  
6 under § 707(b) or (c), a claim, a complaint objecting to  
7 discharge, or a complaint to obtain a determination of

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<sup>2</sup> Incorporates amendments approved by the Judicial Conference that are due to take effect on December 1, 2008, if the Supreme Court approves and if Congress takes no action otherwise.

8 dischargeability of any debt shall commence under Rules  
9 1017, 3002, 4004, or 4007, but a new time period shall not  
10 commence if a chapter 7 case had been converted to a chapter  
11 11, 12, or 13 case and thereafter reconverted to a chapter 7  
12 case and the time for filing a motion under § 707(b) or (c), a  
13 claim, a complaint objecting to discharge, or a complaint to  
14 obtain a determination of the dischargeability of any debt, or  
15 any extension thereof, expired in the original chapter 7 case.

16 (B) A new time period for filing an objection to a claim  
17 of exemptions shall commence under Rule 4003(b) after  
18 conversion of a case to chapter 7 unless:

19 (i) the case was converted to chapter 7 more than  
20 one year after the entry of the first order confirming a plan  
21 under chapter 11, 12, or 13; or

22 (ii) the case was previously pending in chapter 7  
23 and the time to object to a claimed exemption had expired in  
24 the original chapter 7 case.

25 \* \* \* \* \*

#### COMMITTEE NOTE

Subdivision (2) is redesignated as subdivision (2)(A), and a new subdivision (2)(B) is added to the rule. Subdivision (2)(B) provides that a new time period to object to a claim of exemption arises when a case is converted to chapter 7 from chapter 11, 12, or 13. The new time period does not arise, however, if the conversion occurs more than one year after the first order confirming a plan, even if the plan

was subsequently modified. A new objection period also does not arise if the case was previously pending under chapter 7 and the objection period had expired in the prior chapter 7 case.

**RULE 4004. Grant or Denial of Discharge<sup>3</sup>**

1 (a) TIME FOR FILING COMPLAINT OBJECTING TO  
2 DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7  
3 ~~liquidation~~ case, a complaint, or a motion under Rule 7001(b),  
4 objecting to the debtor's discharge under § 727(a) of the Code  
5 shall be filed no later than 60 days after the first date set for  
6 the meeting of creditors under § 341(a). In a chapter 11  
7 reorganization case, the complaint shall be filed no later than  
8 the first date set for the hearing on confirmation. In a chapter  
9 13 case, a motion objecting to a debtor's discharge under §  
10 1328(f) shall be filed no later than 60 days after the first date  
11 set for the meeting of creditors under § 341(a). At least ~~25~~ 28  
12 days' notice of the time so fixed shall be given to the United  
13 States trustee and all creditors as provided in Rule 2002(f)  
14 and (k), and to the trustee and the trustee's attorney.

15 \* \* \* \* \*

16 (c) GRANT OF DISCHARGE.

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<sup>3</sup> Incorporates amendments approved by the Judicial Conference that are due to take effect on December 1, 2008, if the Supreme Court approves and if Congress takes no action otherwise.

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

22 (A) the debtor is not an individual;

23 (B) a complaint, or a motion under Rule  
24 7001(b), objecting to the discharge has been filed and not  
25 decided in the debtor's favor;

26 (C) the debtor has filed a waiver under §  
27 707(a)(10);

28 (D) a motion to dismiss the case under §  
29 707 is pending;

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

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

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

39 court has waived the fees under 28 U.S.C. § 1930(f);

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

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

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

47 (K) a presumption has arisen under §  
48 524(m) that a reaffirmation agreement is an undue  
49 hardship; or

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

53 \* \* \* \* \*

54 (4) In a chapter 11 case in which the debtor is an  
55 individual, or in a chapter 13 case, the court shall not grant  
56 a discharge if the debtor has not filed any required  
57 statement of completion of a course concerning personal  
58 financial management under Rule 1007(b)(7).

59 \* \* \* \* \*



## COMMITTEE NOTE

Subdivision (a) is amended to include a new deadline for the filing of motions under Rule 7001(b) objecting to a debtor's discharge under §§ 727(a)(8), (a)(9), and 1328(f). These sections establish time limits on the issuance of discharges in successive bankruptcy cases by the same debtor. The period for providing notice of the deadline is also changed from 25 days to 28 days.

Subdivision (c)(1) is amended because a corresponding amendment to Rule 7001(b) directs certain objections to discharge to be brought by motion rather than by complaint. Subparagraph (c)(1)(B) directs the court not to grant a discharge if a motion or complaint objecting to discharge has been filed unless the objection has been decided in the debtor's favor.

Subdivision (c)(4) is new. It directs the court in chapter 11 and 13 cases to withhold the entry of the discharge if 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).

### **RULE 7001. SCOPE OF RULES OF PART VII**

- 1       (a)    ADVERSARY PROCEEDINGS. An adversary  
2       proceeding is governed by the rules of this Part VII. The  
3       following are adversary proceedings:
- 4               (1) a proceeding to recover money or property, other  
5       than a proceeding to compel the debtor to deliver property  
6       to the trustee, or a proceeding under § 554(b) or § 725 of  
7       the Code, Rule 2017, or Rule 6002;
- 8               (2) a proceeding to determine the validity, priority,  
9       or extent of a lien or other interest in property, other than a

10 proceeding under Rule 4003(d);

11 (3) a proceeding to obtain approval pursuant to §  
12 363(h) for the sale of both the interest of the estate and of a  
13 co-owner in property;

14 (4) a proceeding to object to or revoke a discharge,  
15 except as provided in subdivision (b) ;

16 (5) a proceeding to revoke an order of confirmation  
17 of a chapter 11, chapter 12, or chapter 13 plan;

18 (6) a proceeding to determine the dischargeability of  
19 a debt,

20 (7) a proceeding to obtain an injunction or other  
21 equitable relief, except when a chapter 9, chapter 11,  
22 chapter 12, or chapter 13 plan provides for the relief;

23 (8) a proceeding to subordinate any allowed claim  
24 or interest, except when a chapter 9, chapter 11, chapter 12,  
25 or chapter 13 plan provides for subordination;

26 (9) a proceeding to obtain a declaratory judgment  
27 relating to any of the foregoing; or

28 (10) a proceeding to determine a claim or cause of  
29 action removed under 28 U.S.C. § 1452.

30 (b) MOTIONS OBJECTING TO DISCHARGE.

31        An objection to discharge under §§ 727(a)(8), (a)(9), or  
32        1328(f), is commenced by motion and governed by Rule  
33        9014.

#### COMMITTEE NOTE

Subdivision (b) is added to the rule, and the text of the existing rule is redesignated as subdivision (a). Subdivision (b) and the amendment to subdivision (a)(4) direct that objections to discharge under §§ 727(a)(8), (a)(9), and § 1328(f) be commenced by motion rather than by complaint. Objections to discharge on these grounds typically present issues more easily resolved than other objections to discharge. In appropriate cases, however, the court may, under Rule 9014(c), order that additional provisions of Part VII of the rules apply to these matters.

Other changes are stylistic.

### III. Information Items

#### A. Publication of Proposed Amendments to Bankruptcy Rules and Official Forms

At the June 2007 meeting, the Standing Committee authorized the publication of a preliminary draft of amendments to Bankruptcy Rules 4008, 7052, and 9021 and the preliminary draft of proposed new Bankruptcy Rules 1017.1 and 7058. The Standing Committee also authorized the publication of proposed time computation amendments to Rule 9006 and 38 other Bankruptcy Rules, amendments to Official Form 8, and proposed new Official Form 27. The deadline for the submission of comments on these proposals is February 15, 2008. Thus far, we have received 18 comments on the proposals, most of which addressed the time computation rules. A public hearing on the proposals is scheduled for January 25, 2008.

The Advisory Committee will consider all of the comments submitted on these proposals, whether in writing, or at the public hearing, during its March, 2008 meeting. The Advisory Committee anticipates that it will present these amendments, with appropriate changes, if any, to the Standing Committee at its June, 2007 meeting for approval and transmittal to the Judicial Conference.

## B. Revision of Means Test Forms

In a series of email communications and a conference call, the Committee developed revisions of Forms 22A and 22C (relating to the chapter 7 means test, the applicable commitment period under chapter 13, and debtor income and expense calculations) to reflect IRS changes in the governing National and Local Expense Standards. This process, and the resulting proposed revisions, are described in detail in the attached October 31, 2007, memorandum from Judge Swain to Judge Rosenthal.

## C. Forms Modernization

At the Jackson meeting, the Committee approved in principle, and authorized the Chair to organize, a subcommittee or other appropriate working group, reporting to the Committee, that will review and propose revisions of the existing Official Bankruptcy Forms to better serve the various constituencies and reflect changes in CM/ECF and other relevant technology, in a manner consistent with applicable policy decisions of the Judicial Conference and its committees.

## D. Committee Membership

The Chief Justice has appointed three new members of the Advisory Committee. District Judge David H. Coar of the Northern District of Illinois, Bankruptcy Judge Jeffery P. Hopkins of the Southern District of Ohio, and Chief Bankruptcy Judge Elizabeth L. Perris of the District of Oregon were appointed to three-year terms. They replace District Judge Thomas S. Zilly, former Chair of the Committee, Chief Bankruptcy Judge Mark B. McFeeley of the District of New Mexico, and Bankruptcy Judge Christopher M. Klein of the Central District of California whose terms have expired. The Chief Justice appointed District Judge Laura Taylor Swain of the Southern District of New York as Chair of the Committee.

Attachments: October 31, 2007, Memorandum re Means Test Forms

Draft of Minutes of the Advisory Committee Meeting of September 6-7, 2007

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**TO: Hon. Lee H. Rosenthal, Chair  
Standing Committee on Rules of Practice and Procedure**

**FROM: Hon. Laura Taylor Swain, Chair  
Advisory Committee on Bankruptcy Rules**

**DATE: October 31, 2007**

**RE: Report of the Advisory Committee on Bankruptcy Rules Recommending  
Amendments to Official Forms 22A and 22C**

As you will recall, the Standing Committee at its June 2007 meeting approved several revised Official Forms, as recommended by the Advisory Committee. Official Forms 22A and 22C were in the package that the Advisory Committee had submitted for consideration in connection with that meeting. Form 22A reports the information required to implement the “means test” of section 707(b) of the Bankruptcy Code (as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)), under which individual debtors seeking chapter 7 relief may be presumed to be abusing the provisions of chapter 7, and, unless they can overcome the presumption, have their cases dismissed or converted to chapter 13. Form 22C addresses the BAPCPA requirements (1) that a specific definition of “current monthly income” be utilized in determining the disposable income that chapter 13 debtors may be required to pay to unsecured creditors and in determining the “applicable commitment period” for which payments must be made, and (2) that, for debtors whose income is above a defined median, the chapter 7 means test also be used in determining disposable income.

Pursuant to section 707(b)(2)(A)(ii)(I), the means test requires that a debtor's general living expenses be determined by reference to monthly expense amounts specified under the "National Standards and Local Standards . . . issued by the Internal Revenue Service." These standards are described in the Financial Analysis Handbook (§ 5.15.1) of the Internal Revenue Manual. Before BAPCPA, the Manual was an exclusively internal document of the IRS, without the force of law, and the Financial Analysis Handbook provided guidelines for revenue agents negotiating voluntary repayment of delinquent taxes. However, since BAPCPA, the National and Local Standards described in the Manual have been legally binding for purposes of the bankruptcy means test and disposable income calculations.

Shortly before the September 2007 meeting of the Advisory Committee, we learned that the IRS was planning to make certain amendments to the National and Local Standards, effective October 1, 2007, that would affect the operation of Forms 22A and 22C. With the assistance of the Executive Office for United States Trustees and Advisory Committee member Christopher Kohn, Esq., of the Justice Department, we were able to reach an agreement with the IRS that postponed the effective date of the new provisions for bankruptcy purposes until January 1, 2008, while permitting the changes to go into effect as scheduled for internal tax collection purposes. This delay was intended to allow sufficient time for the Advisory Committee, the Standing Committee and the Judicial Conference to formulate and act on further proposed revisions to the affected forms, as well as to permit publishers of print and electronic versions of the forms to have updated products in place in time for the January 1, 2008, effective date.

As recommended by the Advisory Committee and the Standing Committee, Forms 22A and 22C were withdrawn from the consent calendar for the September 2007 meeting of the

Judicial Conference pending such further revisions. Form 22B also was withdrawn, but no further revisions are required of that form.

The IRS changes have necessitated revisions of four areas of the forms. First, the IRS no longer correlates its general National Standard Expenses to income ranges and provides, instead, for such expenses to be correlated only to family size, without regard to income. Accordingly, the revised forms eliminate a box in which the debtor was asked to identify the income range used to determine those expense amounts.

Second, the IRS introduced as a new National Standard, a specific per-person allowance for out-of-pocket health expenses, the amount of which varies depending on whether the individual is age 65 and over, or is under 65. The forms have been amended to provide for this new expense allowance.

Third, the IRS decided to include cell phone expenses within its Local Standard for housing. This required that cell phone expenses be eliminated from another line on the forms that deals with telecommunication expenses not included in the Local Standards.

The fourth area is somewhat more complicated. Formerly, the IRS standards included expense amounts that took into account both vehicle operation and public transportation expenses in a single deduction figure. The amended standards provide separate allowances for public transportation and vehicle operation expenses. The Advisory Committee has revised the form to instruct debtors to utilize the public transportation allowance if they do not operate a car, or to check a different box and enter the applicable vehicle operation allowance if they operate one or more cars. Because it is unclear whether debtors who operate one or more vehicles and also use public transportation are entitled to claim an allowance for public transportation costs as well as the vehicle allowance, the revised Forms 22A and 22C provide an area in the

transportation expense box (lines 22B and 27B in Forms 22A and 22C, respectively) in which debtors who contend that such an additional allowance is available can make such a claim.

However, as explained in the Committee Note, the forms do not take a position as to whether such a claim is proper. This same approach has been taken in other, previously approved, areas of the forms in order to allow the courts to decide questionable issues arising under the means test.

The Advisory Committee requests that the Standing Committee approve these additional amendments to Official Forms 22A and 22C and submit those forms, as amended, along with Form 22B, which was approved by the Standing Committee in June 2007, to the Judicial Conference with a recommended effective date of January 1, 2008. (The revisions discussed above are highlighted on the attached copies of Forms 22A and 22C and the Committee Note.)