

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

PUBLIC NOTICE

**ENTRY OF STANDING ORDER NO. 06-5 ADOPTING REVISION
TO INTERIM PROCEDURES**

Effective September 1, 2006, the *Interim Procedures Governing Practice and Procedure Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* exhibit, incorporated by reference into Standing Order No. 06-5, is revised as follows:

1. *Interim Procedure 1006-1 Fees: Installment Payments – (F) Chapter 7 Fee Waiver.* The revision conforms subparagraph (F)(1) to the proposed repeal of LBR 1006-1(D) and the promulgation of proposed new LBR 1006-3(C).
2. *Interim Procedure 1007-1 Lists, Schedules, Statements, and Other Documents – (J) Certificate from Approved NonProfit and Credit Counseling Agency and Copy of Debt Repayment Plan.* The revisions to subparagraphs (J)(2) and (J)(4) are intended to make it plainer that they address temporary exemption from the credit counseling requirement under 11 U.S.C. §109(h)(3). In addition, the revision to subparagraph (J)(4) confirms that the Clerk will provide the indicated notice of this Interim Procedure provision to a debtor or debtor’s counsel.
3. *Interim Procedure 1007-3 Statement of Intention – (A) Requirement.* The revisions to this paragraph are intended to conform to the bracketed defined term “Statement of Intention”.
4. *Interim Procedure 3070-1 Payments in Chapter 12 and Chapter 13 Cases – (C) Debtor’s Failure to Commence Payments in Chapter 13 Cases.* This paragraph is new and conforms to the requirements set forth in Public Law No. 09-8, 119 STAT 83.
5. *Interim Procedure 4002-1 Duties of the Debtor – (A)(1)(a) Debtor’s Duty to Cooperate with Trustee and Provide Pre-petition Tax Information to Requesting Trustee and Creditor; Debtor’s Duty Not to File with the Court.* The revision to this subparagraph more fully references the noted relevant Bankruptcy Code sections.
6. *Interim Procedure 4002-1 Duties of the Debtor – (A)(2) Procedure for Requesting Debtor to File Post-petition Tax Information with the Court.* The heading to subparagraph (A)(2) is amended to clarify that it references “post-petition” tax information. Stylistic changes have been made to subparagraph (A)(2)(a).
7. *Interim Procedure 4002-1 Duties of the Debtor – (A)(2)(e).* This new subparagraph is intended to make it explicit that Interim Procedure 4002-1(A) has no effect on the discovery rules listed in that subparagraph.

The Court will continue to assess the need to further develop and refine the Interim Procedures and will make additional revisions as the circumstances warrant. The Court anticipates that practice under the Interim Bankruptcy Rules and these Interim Procedures will generate comment from the public and bar that will guide the Court in making future revisions to the Interim Procedures. (The Court's Standing Committee on Local Bankruptcy Rules has been examining the Interim Procedures and the Court's Bankruptcy Bar Liaison Committees are invited to do so as well.)

Comments regarding the Interim Procedures may be directed to localrules@vaeb.uscourts.gov or be mailed to:

U.S. Bankruptcy Court
Attn: Bankruptcy Interim Procedures
1100 E. Main Street, Room 310
Richmond, VA 23219-3515.

William C. Redden
Clerk of Court

Dated: June 29, 2006

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

In re)
)
Adoption of Interim) Standing Order No. 06-5
Procedures)

ORDER ADOPTING INTERIM PROCEDURES

On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Act”) was enacted into law;

Most provisions of the Act are effective on October 17, 2005;

The general effective date of the Act has not provided sufficient time to promulgate local bankruptcy rules after appropriate public notice and an opportunity for comment; and

A review has been undertaken of the Court’s Local Bankruptcy Rules to identify and implement interim changes to those procedures that the Court determines should be revised to meet the requirements set forth in the Act and in the Interim Bankruptcy Rules adopted earlier by the Court.

NOW, THEREFORE, IT IS ORDERED that:

1. Standing Order No. 06-2 is hereby rescinded. Orders, procedures and directives of the Court referencing Standing Order No. 06-2 shall be deemed to reference this order.
2. The Interim Procedures Governing Practice and Procedure under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Interim Procedures”), attached as an Exhibit to this order, are hereby adopted by the Court.
3. a . In addition to the Interim Bankruptcy Rules adopted by the Court pursuant to Standing Order No. 05-6 and a revision to those Interim Bankruptcy Rules adopted by the Court pursuant to Standing Order No. 05-8, the Interim Procedures shall apply in cases and proceedings governed by the Act.
- b. Any Local Bankruptcy Rule or other procedural requirement of this Court that is not consistent with the Bankruptcy Code, as amended by the Act, the Interim Bankruptcy Rules or these Interim Procedures, is superseded by and shall not be enforced with respect to cases under the Act. Absent any such inconsistency and unless addressed in this order or Exhibit thereto, or further order of the Court, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court and procedural requirements, shall apply to cases filed in this Court under the Act.

- c. For cases and proceedings not governed by the Act, the Local Bankruptcy Rules of this Court, other than the Interim Bankruptcy Rules and Interim Procedures, shall apply.
4. The Interim Procedures shall remain in effect until further order of the Court.
5. Amendments to this order may be entered from time to time in keeping with the needs of the Court.
6. This order shall take effect on September 1, 2006.

Dated: June 29, 2006

/s/ Douglas O. Tice, Jr.
DOUGLAS O. TICE, JR.
Chief United States Bankruptcy Judge

/s/ David H. Adams
DAVID H. ADAMS
United States Bankruptcy Judge

/s/ Stephen S. Mitchell
STEPHEN S. MITCHELL
United States Bankruptcy Judge

/s/ Stephen C. St. John
STEPHEN C. ST. JOHN
United States Bankruptcy Judge

/s/ Robert G. Mayer
ROBERT G. MAYER
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**



Interim Procedures Governing Practice and Procedure Under
The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Exhibit to Standing Order No. 06-5
(VERSION 06/26/06)

SEPTEMBER 2006

INTERIM PROCEDURES

1. INTERIM PROCEDURE 1002-2 NOTICE OF ALTERNATIVES TO INDIVIDUAL DEBTORS OF CHAPTERS AVAILABLE UNDER BANKRUPTCY CODE AND OTHER REQUIRED INFORMATION

(A) **Requirement:** Section 342(b) of title 11 of the United States Code states that: "Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual containing (1) a brief description of – (A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and (B) the types of services available from credit counseling agencies; and (2) statements specifying that – (A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and (B) all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General."

(B) **Distribution to Counsel and to Others:** To comply with this requirement, the Clerk is directed to provide such notice on approved forms to all individuals, including bankruptcy petition preparers and debtors, requesting copies of the local forms containing the required notice provisions and to distribute such notice to all members of the bar who regularly file bankruptcy cases.

(C) **Certificate to be Filed with Petition:** Any individual debtor whose debts are primarily consumer debts and files a petition in this Court must file with such petition the certificate referred to at 11 U.S.C. §521(a)(1)(B)(iii)(I)-(II), properly signed by the debtor(s).

2. INTERIM PROCEDURE 1006-1 FEES: INSTALLMENT PAYMENTS

(A) **Application:** Any individual debtor desiring to pay the filing fee in installments must file an application with the Clerk substantially conforming to that local form entitled "Application to Pay Filing Fee in Installments-Eastern District of Virginia". The application form is available from the Clerk's Office. To be in substantial conformity, the application must:

- (1) include a statement that until the filing fee is paid in full, the debtor will not make additional payment or transfer any additional property to an attorney or any other person for services in connection with the bankruptcy case,
- (2) include a statement that the debtor understands that the case will be dismissed if any installment payment is not received by the date due,
- (3) include a schedule of payments as prescribed in (B) below, and
- (4) be signed by both the debtor and the debtor's attorney (if any).

(B) **Schedule of Payments:** Any Application to Pay Filing Fee in Installments shall propose a payment plan in accordance with the following schedule:

| Chapter | At Filing | 1 Month After Filing | 2 Months After Filing |
|------------|-----------|----------------------|-----------------------|
| Chapter 7 | \$100 | 100 | 99 |
| Chapter 11 | \$430 | 409 | 200 |
| Chapter 12 | \$105 | 75 | 59 |
| Chapter 13 | \$ 90 | 90 | 94 |

Payments are due as shown, on the same day of the month as the date on which the petition was filed. If that date falls on a day that the Court is closed, payment is due not later than on the next business day.

(F) Chapter 7 Fee Waiver:

(1) ***Clerk's ~~Rejection~~ Dismissal of Chapter 7 Petition:*** If the application requesting a waiver under 28 U.S.C. §1930(f), prepared as prescribed by the appropriate official form, does not accompany the petition and the required fee has not been paid, or if the application does not conform to the requirements of FRBP 1006, Interim Rule 1006(c) and this Interim Procedure, the Clerk shall ~~reject the petition~~ proceed in the manner provided for in LBR ~~1006-1(D)(1)~~ 1006-3(C).

(2) *Completion by Debtor of Filing Fee Waiver Application; Review by Court and Standard of Eligibility; Court Determination:*

(a) The debtor shall file a properly completed application requesting a filing fee waiver along with the bankruptcy petition. The application must conform substantially to Official Form B3B "Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments." The application shall be submitted promptly by the Clerk to the Court for determination of the application.

(b) Unless otherwise ordered by the Court, the application will be considered on an *ex parte* basis. In considering the circumstances of the debtor's application, the Court's determination shall be guided by the standard of eligibility set forth at II.A. of the *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* ("JCUS IFP Procedures").

(c) The Court either will direct that no hearing be held and enter an order granting or denying the application or direct that an early hearing on the application be set on ten (10) days notice given to the United States trustee, the trustee, the debtor, and the debtor's attorney, if any. If the application is denied, the debtor shall pay the filing fee in full no later than ten (10) days after the entry of the order or make the required installment payments as set forth in the order denying the application. The Schedule of Payments set forth in the order shall conform to the schedule prescribed below:

| | | | |
|--------------|--|---|---|
| Chapter 7 | Entry of Order Plus Ten (10) Days \$ 100 | 1 Month After Entry of Order \$ 100 | 2 Months After Entry of Order \$ 99 |
|--------------|--|---|---|

Payments are due as shown, on the same day of the month on which the order was entered. If any required payment date falls on a day that the Court is closed, payment is due not later than on the next business day. The order will include a provision advising the debtor that if the debtor fails to take such action, the Clerk shall enter an order dismissing the case.

(3) ***Post-Petition Application by Debtor to Waive Filing Fee:*** If a debtor files an application to pay the filing fee in installments and later applies for a waiver of the filing fee, the Court may waive any unpaid balance on the filing fee, if the circumstances so warrant. The waiver application must be filed prior to the next installment payment to avoid dismissal of the debtor's case for nonpayment.

(4) **Conversion of Case from Chapter 12 or 13 to Chapter 7:** If a case is converted from chapter 12 or 13 to chapter 7, the Court may waive any unpaid balance of the filing fee, if the circumstances described in II.A. of the JCUS IFP Procedures are present.

(5) **Conversion of Case from Chapter 7 to Chapter 12 or 13:** If the filing fee of an individual chapter 7 debtor is waived by the Court and the debtor's case later is converted to chapter 12 or 13, the debtor shall pay, as applicable, the full chapter 12 or 13 filing fee. The order converting the debtor's case to one under chapter 13 shall include a provision directing the debtor either to pay the filing fee in full or propose a payment plan that shall conform to the schedule set forth at subparagraph (F)(2)(d) of this Interim Procedure with the first payment being filed no later than ten (10) days after entry of the Court's order of conversion. Payments are due as shown, on the same day of the month on which the order was entered. If any required payment date falls on a day that the Court is closed, payment is due not later than on the next business day. The order will include a provision advising the debtor that if the debtor fails to pay the filing fee in full or to propose a payment plan in accordance with the Court's order, the Clerk shall enter an order dismissing the case.

(6) **Vacating Order Granting Filing Fee Waiver:** The Court, on its own initiative or on motion of the United States trustee or trustee, may vacate an order waiving the filing fee if developments in the case or administration of the estate demonstrate that the waiver no longer remains warranted. In the event an order vacating the order waiving the filing fee is entered, the debtor shall pay the filing fee in full. The debtor may propose a payment plan that conforms to the schedule set forth at subparagraph (F)(2)(d) of this Interim Procedure with the first payment being filed no later than ten (10) days after entry of the Court's order vacating the earlier entered order waiving the filing fee. Payments are due as shown, on the same day of the month on which the order was entered. If any required payment falls on a day that the Court is closed, payment is due not later than on the next business day. The order will include a provision advising the debtor that if the debtor fails to pay the filing fee in full or to propose a payment plan in accordance with the Court's order, the Clerk shall enter an order dismissing the case.

(7) **Waiver of Other Fees Constituting Filing Fees by the Court:** Other fees constituting filing fees scheduled by the Judicial Conference under 28 U.S.C. §1930(b) and (c) may be waived by the Court for an individual chapter 7 debtor whose filing fee has been ordered waived by the Court.

(8) **Payment of Trustee Compensation and Fee:** If a debtor's application to waive the filing fee is granted by the Court, payment of \$45 to the trustee serving in the case from the chapter 7 filing fee, as otherwise provided for at 11 U.S.C. §330(b)(2), and the additional \$15 fee as otherwise provided for at §330(b)(2) and as further provided for at Item (9) of the Bankruptcy Court Miscellaneous Fee Schedule, shall not be made to the trustee as there is no alternative authorized payment source from which such payment may be made.

Comments

1006-1(B) and 1006-1(F)(2)(c) This revision is due to changes made under Public Law No. 109-171, which increased the statutory filing fees for cases commenced under chapter 7 and chapter 13 by \$25 and \$85, respectively. The changes became effective and apply to all chapter 7 and Chapter 13 cases filed on or after April 9, 2006. [Changes Effective 4/9/06.]

1006-1(F)(1) This revision conforms to the repeal of LBR 1006-1(D) and the promulgation of new LBR 1006-3(C).
[Change effective 9/1/06.]

3. INTERIM PROCEDURE 1007-1 LISTS, SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS

(A) ***Dismissal of Case***: Except as provided in LBR 1017-3, in any case where lists, schedules, statements, and other documents, including Form B22A (Chapter 7) “Statement of Current Monthly Income and Means Test Calculation”, Form B22B (Chapter 11) “Statement of Current Monthly Income” or Form B22C (Chapter 13) “Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income”, are not filed at the time of the filing of a voluntary petition, the Clerk shall enter an order of dismissal unless the same are filed within 15 days after the filing of the petition, or a motion to extend time for filing lists, schedules, statements, and other documents has been filed prior to the expiration of the 15-day period.

(B) ***Motion to Extend Time***: Such motion to extend time for filing shall be accompanied by a proof of service evidencing notice to the United States trustee, any appointed trustee, any official committee appointed in the case and all creditors. Where there are more than thirty creditors in the case, the debtor need only provide notice of the motion to extend time to the ten largest secured creditors, the twenty largest unsecured creditors and any official committee appointed in the case. The motion to extend time shall give notice that parties objecting to the extension of time shall file written objections with the Court within five (5) business days after service of the motion by the debtor.

(C) ***Order Extending Time***: Where no objections to the motion to extend time to file the lists, schedules, statements, and other documents, as referenced in paragraph (A) of this Interim Procedure, are timely filed with the Court, the Clerk shall enter an order extending time for filing to not later than the fourth business day prior to the scheduled meeting of creditors. If the lists, schedules, statements, and other documents, as referenced in paragraph (A) of this Interim Procedure, are not filed by said date, the Clerk shall enter an order dismissing the case.

(E) ***Hearing on Further Extension***: Any debtor requesting an extension of time to file lists, schedules, statements, and other documents, as referenced in paragraph (A) of this Interim Procedure, after four business days prior to the scheduled meeting of creditors must request a hearing date and give notice to parties as set forth in paragraph (B) of this Interim Procedure and file a proof of service with the motion to extend time.

(F) ***Notice of Possible Dismissal***: The Clerk shall give notice of this Interim Procedure to a debtor or debtor's counsel who files a petition not accompanied by all required lists, schedules, statements, and other documents, as referenced in paragraph (A) of this Interim Procedure. The Clerk shall also give notice of this Interim Procedure in the meeting of creditors notice.

(H) ***List of Creditors Holding 20 Largest Unsecured Claims***: To assist the United States trustee in appointing a creditors' committee, the list required by FRBP 1007(d) shall include the amount owed, by amount of debt ranging from the largest creditor in amount owed to the smallest creditor in amount owed. The list shall also include the name and telephone number of a contact person or representative of the unsecured creditor. If a minor child is one of the creditors holding the 20 largest unsecured claims, indicate that by stating “a minor child” and do not disclose the child’s name.

(I) ***Payment Advices or Other Evidence of Payment:*** Copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition by the debtor from an employer of the debtor shall:

- (1) not be filed with the Court unless otherwise ordered, and
- (2) be provided to the trustee, and any creditor (who timely requests copies of the payment advices or other evidence of payment) at least seven (7) days before the time of the meeting of creditors conducted pursuant to 11 U.S.C. §341.

(J) ***Certificate from Approved NonProfit Budget and Credit Counseling Agency and Copy of Debt Repayment Plan:***

(1) ***Filing:*** A debtor who is an individual shall file with the voluntary petition a certificate from an approved nonprofit budget and credit counseling agency and a copy of a debt repayment plan, if any, developed through the approved agency, unless the Court finds that the credit counseling requirement of 11 U.S.C. §109(h) either will be deferred (*i.e.*, temporary exemption) or not apply at all (*i.e.*, permanent exemption) as provided for under §109(h)(3) and (4), respectively.

(2) ***Temporary Exemption; Exigent Circumstances Certification:*** If the debtor files a certification with the petition in support of a request citing exigent circumstances that the debtor has attempted, but was unable, to, obtain credit counseling within five (5) days from making the request, the Court may grant a temporary exemption from the requirements specified in §109(h)(3)(B). The request may be granted if the request is satisfactory to the Court. The certification must set forth the amount of additional time requested. A temporary exemption from the requirements specified at 11 U.S.C. §109(h)(3)(B) shall expire no later than 30 days after the petition filing date, except that the Court, for cause, may grant an additional extension of 15 days. The debtor must cite with particularity the circumstances that would support granting the debtor's request. The Court will review the certification and if a determination is made that the certification satisfies the requirements set forth under §109(h)(3)(A) and is satisfactory to the Court, the Court may enter an order without notice or hearing granting a temporary exemption from the requirements of §109(h)(1).

(3) ***Permanent Exemption from Credit Counseling Requirement:*** If the debtor files a motion with the petition in support of requesting a permanent exemption from the credit counseling requirement, the motion shall be served by the debtor on the trustee and the United States trustee. If the trustee or United States trustee files an objection within ten (10) days following service of the motion, the Court shall set a hearing on the objection. If no objection is timely filed, and if the Court determines that the debtor should be granted a permanent exemption from the requirements set forth at 11 U.S.C. §109(h) upon a finding of incapacity, disability, or active military duty in a military combat zone as provided for under §109(h)(4), the debtor need not take a credit counseling course.

(4) ***Dismissal of Case; Notice:*** In any case where the required certificate of credit counseling and debt repayment plan, if any, a certificate of exigent circumstances requesting a temporary exemption or a motion for permanent exemption is not filed at the time of the filing of the voluntary petition, the Clerk shall enter an order of dismissal unless the same is filed no later than three (3) business days after the filing of the petition. The Clerk shall give notice of this Interim Procedure to a debtor or debtor's counsel who files a petition not accompanied by the required certification or motion.

(K) *Involuntary Small Business Case and Voluntary Small Business Case:*

As provided for in 11 U.S.C. §1116(1), in an involuntary small business case, the trustee or debtor in possession shall “file not later than [seven] (7) days after the date of the order for relief – (A) its most recent balance sheet, statement of operations, cash-flow statement and Federal income tax return; or (B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash flow statement has been prepared and no Federal income tax return has been filed[.]” If any of these required documents are not filed within the prescribed time, a motion to extend time for filing these documents shall be filed prior to the expiration of the seven- (7-) day period and conform to the requirements set forth in Interim Procedure 1007-1(B). In a voluntary small business case, these same prescribed documents shall be appended to the petition unless a motion to extend time for filing these documents is filed with the petition. Such motion shall conform to the requirements set forth at Interim Procedure 1007-1(B). The Court shall grant the motion only for cause shown and on notice to the entities set forth at Interim Rule 1007(c). Cause shown may include requiring the time provided for in Interim Rule 1020 and §1116 for a debtor to designate in a voluntary or involuntary case whether the debtor is a small business debtor.

Comments

1007-1(J)(2) and (4) The revisions to subparagraphs (J)(2) and (4) are intended to make it plainer that they address temporary exemption from the credit counseling requirement under 11 U.S.C. §109(h)(3). In addition, the revision to subparagraph (J)(4) confirms that the Clerk will provide the indicated notice of this Interim Procedure provision to a debtor or debtor’s counsel. [Changes effective 9/1/06.]

4. INTERIM PROCEDURE 1007-3 STATEMENT OF INTENTION

(A) **Requirement:** Pursuant to 11 U.S.C. §521(a)(2)(A), each individual chapter 7 debtor with debts secured by property of the estate shall file a Chapter 7 Individual Debtor's Statement of Intention ["Statement of Intention" hereafter]. The original Statement of Intention shall be accompanied by such copies or proof of service as required by paragraph (B) of Local Bankruptcy Rule 1007-3. The Statement of Intention shall be filed within thirty days after the petition is filed or on or before the meeting of creditors, whichever is earlier.

Comments

1007-3(A) The revisions to this paragraph are intended to conform to the bracketed defined term “Statement of Intention”. [Changes effective 9/1/06.]

5. INTERIM PROCEDURE 1009-1 AMENDMENTS TO PETITION, LISTS, SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS

(A) **Notice to Affected Parties:** Where the debtor files any amendment to the petition, lists, schedules, statements, or other documents previously filed, as referenced in Interim Procedure 1007-1(A), the debtor shall send notice of the same to the United States trustee, any trustee appointed, and to any and all entities affected by the amendment. Where the debtor adds creditors to the case by supplementing either the schedules or the list of creditors previously filed, the debtor shall serve upon each newly-listed creditor a copy of the following:

- (1) the amendment,
- (2) the meeting of creditors notice,
- (3) the order granting discharge (if any),
- (4) any other filed document affecting the rights of said creditor, and
- (5) the notice required by Local Bankruptcy Rule 3003-1 (B).

6. INTERIM PROCEDURE 1017-1 CONVERSION

(C) Filing of Official Form B22A, B22B or B22C Upon Conversion of Case: In a case of an individual debtor converted to chapter 11, the debtor shall file Official Form B22B, “Statement of Current Monthly Income”, or to chapter 13, the debtor shall file Official Form B22C, “Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income”, within 15 days after entry of the conversion order. Unless otherwise ordered by the Court, in a case converted from chapter 11, 12 or 13 to chapter 7, the debtor shall file Official Form B22A, “Statement of Current Monthly Income and Means Test Calculation for Use in Chapter 7”, within 15 days after conversion.

7. INTERIM PROCEDURE 1017-2 DISMISSAL OR CONVERSION OF CASE FOR ABUSE OF CHAPTER 7

Dismissal or Conversion Pursuant to 11 U.S.C. §707(b)(1): As set forth in Interim Rule 1017(e), an individual debtor’s voluntary case may be dismissed or, with the consent of the debtor, converted for abuse under section 707(b) only on motion filed by the United States trustee, trustee, or any party in interest, and only if the debtor’s debts are primarily consumer debts, after a hearing on notice to the entities set forth therein and to any other entities as the Court may direct. If the United States trustee is the movant, the Clerk shall give notice of any hearing on possible dismissal or, with the individual debtor’s consent, conversion of the debtor’s case, under 11 U.S.C. §707(b). The United States trustee, the trustee appointed in the chapter 7 case, and the movant, if not the United States trustee or trustee, shall appear and be heard. In addition, the Court, acting on the Court’s own initiative, may direct the Clerk to issue a rule to show cause. The Clerk shall give notice of any hearing or rule on possible dismissal or, with the individual debtor’s consent, conversion of the debtor’s case, under 11 U.S.C. §707(b), to the entities set forth in Interim Rule 1017(e) and any other entities as the court may direct.

8. INTERIM PROCEDURE 1020-1 SMALL BUSINESS CHAPTER 11 REORGANIZATION CASES

(A) Election to be Considered a Small Business in a Chapter 11 Reorganization: [Repealed]

(B) How Election Made: Statement of Election. [Repealed]

9. INTERIM PROCEDURE 2002-1 NOTICE TO CREDITORS & OTHER INTERESTED PARTIES

(D) Notices/Copies for United States Trustee

(1) Filing of Copies of Documents for Transmittal to the United States Trustee by the Clerk:

- (j) list of equity security holders in chapter 11 case;
- (k) Official Forms B22A, B22B and B22C.

(1) Implementation of Notice of Preferred Addresses Under 11 U.S.C. §342(f) and National Creditor Registration Service:

(1) An entity and a notice provider may agree that when the notice provider is directed by the Court to give a notice to that entity, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.

(2) The filing of a notice of preferred address pursuant to 11 U.S.C. §342(f) by a creditor directly with the agency or agencies that provide noticing services for the Court will constitute the filing of such a notice with the Court.

(3) Registration with the National Creditor Registration Service ("NCRS") must be accomplished through the agency that provides noticing services for the Court. Forms and registration information is available at www.ncrsuscourts.com. The Clerk is directed to forward a notice of preferred address filed with the Court pursuant to §342(f) to the NCRS for processing.

10. INTERIM PROCEDURE 2007.2(a)-1 APPOINTMENT OF PATIENT CARE OMBUDSMAN IN A HEALTH CARE BUSINESS CASE

(B) Reference to Health Care Ombudsman: There being no "health care ombudsman" provided for under 11 U.S.C. §333(a), the reference to "health care ombudsman in the first paragraph of the Committee Note following Interim Rule 2007.2(a) shall be deemed to reference "patient care" ombudsman.

11. INTERIM PROCEDURE 2015.1 PATIENT CARE OMBUDSMAN

There being no "health care ombudsman" provided for under 11 U.S.C. §333(a), the reference to "health care ombudsman under §333(c)" at Interim Rule 2015.1(b) shall be deemed to reference "patient care ombudsman under §333(c)."

12. INTERIM PROCEDURE 2016-1 COMPENSATION OF PROFESSIONALS

(C) *For Debtor's Attorney in Chapter 13 Case:*

(7) ***Fees Requested Not in Excess of \$3,000 [For All Cases and Proceedings Filed on or After 10/17/05]:*** Where the Rule 2016-1 disclosure of compensation does not exceed \$3,000, the Court may award compensation in such amount or less, plus reimbursement of actual and necessary expenses, with or without a hearing, upon the following:

(a) ***Notice:*** The debtor's attorney shall serve a copy of the Rule 2016-1 disclosure of compensation and "Chapter 13 Plan and Related Motions" on the debtor and the standing trustee, along with notice that they have ten (10) business days from the meeting of creditors in which to file an objection to the fees requested in the LBR 2016-1 disclosure of compensation opposing said fees in their entirety, or in a specific amount. Counsel for the debtor may file a request for hearing with the Court and notice of same shall be served upon the debtor(s), the standing trustee, and the United States trustee. At any such hearing, each of the parties shall have the burden of proof established in 11 U.S.C. §§328, 329 and 330. In the absence of notification of objection by the debtor or the standing trustee, the fees will be allowed as disclosed.

(b) ***Proof of Service:*** With the LBR 2016-1 disclosure of compensation, the debtor's attorney shall file a proof of service evidencing proper service under subparagraph (C)(7)(a) of this Interim Procedure.

(8) ***Fees and Expenses Requested After the Filing of the Petition [For All Cases and Proceedings Filed on or After 10/17/05]:*** Any fee in excess of the maximum established in the rule will require an application for allowance of compensation and reimbursement of expenses by separate and distinct pleading. Any such application shall comply with 11 U.S.C. §330, FRBP 2016, the United States Trustee Program "Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses Filed under 11 U.S.C. §330" and the other provisions of this Interim Procedure. The attorney shall not send a bill directly to the debtor. Should the debtor receive a bill from that person's attorney, the debtor should send a copy of such bill to the standing trustee. Service and notice of the application shall be given in accordance with paragraph (C)(7) of this Interim Procedure.

13. INTERIM PROCEDURE 3017.1-1(C) APPROVAL OF DISCLOSURE STATEMENT

(A) ***Conditional Approval:*** If, under Interim Rule 3016(b), "the plan is intended to provide adequate information under §1125(f)(1), it shall be so designated and [Interim] Rule 3017.1 shall apply as if the plan is a disclosure statement." As provided for in Interim Rule 3017.1, in a small business case, the Court may, upon application of the plan proponent, or on the Court's own initiative, conditionally approve the disclosure statement filed in accordance with FRBP 3016. A copy of the plan, disclosure statement and request for conditional approval of the disclosure statement shall be served on the United States trustee. On or before conditional approval of the disclosure statement, the Court shall:

- (1) fix a time within which the holders of claims and interests may accept or reject the plan;
- (2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

(C) *Objections and Hearing on Final Approval:* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with FRBP 2002(b) and 11 U.S.C. §1125(f)(3)(B) and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the Court at any time before final approval of the disclosure statement or by an earlier date as the Court may fix. If a timely objection to the disclosure statement is filed, the Court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

14. INTERIM PROCEDURE 3070-1 PAYMENTS IN CHAPTER 12 AND CHAPTER 13 CASES

(C) *Debtor's Failure to Commence Payments in Chapter 13 Cases:* Except as provided in LBR 1017-3, each chapter 13 debtor shall commence payments proposed by the plan not later than thirty days after the date of the filing of the plan or the order for relief, whichever is earlier, unless the Court has set some different time. If payments are not received as required, the trustee shall may certify the same to the Clerk. Upon receipt of such a certification, the Clerk shall enter an order dismissing the debtor's case.

(D) *Chapter 13 Pre-Confirmation Payments of Personal Property Leases:* Pre-confirmation payments of personal property leases governed by 11 U.S.C. §1326(a)(1)(B) shall be made by the debtor to the chapter 13 trustee as part of the total payment to the trustee, and the trustee shall pay the lessor, both before and after confirmation, unless the debtor's plan provides that lease payments will be made directly by the debtor or no plan provision addresses payment of the debtor's lease obligation, in which event the debtor shall make the pre-confirmation payments directly to the lessor and furnish proof of such payments to the trustee.

(E) *Chapter 13 Pre-confirmation Adequate Protection Payments:* Pre-confirmation adequate protection payments governed by 11 U.S.C. §1326(a)(1)(C) shall be made by the debtor to the chapter 13 trustee as part of the total payment to the trustee, and the trustee shall pay the amount provided for by the plan to the secured creditor both before and after confirmation, unless the debtor's plan provides that such payments will be made directly by the debtor or no plan provision addresses payment of the secured claim, in which event the debtor shall make the pre-confirmation payments directly to the secured creditor and furnish proof of such payments to the trustee.

Comments

IP 3070-1 Paragraph (C) is new. This paragraph conforms to the requirements set forth in Public Law No. 109-8, 119 STAT 83. [Change effective 9/1/06.]

15. INTERIM PROCEDURE 4001(a)-1 RELIEF FROM AUTOMATIC STAY

(A) **Applicability of Contested Matter Rules:** All motions for relief from stay, except those under paragraph (G) herein, are contested matters and are governed by FRBP 9014, 11 U.S.C. §362(c), (d), (e), (h), (l), and (m) and these Local Bankruptcy Rules and these Interim Procedures.

(J) **Rent Deposit and Transmittal Procedure Under 11 U.S.C. §362(l):** In those cases governed by 11 U.S.C. §362(l)(1)(B), a debtor must deposit with the Clerk any rent that would become due during the 30-day period after the filing of the bankruptcy petition and the Clerk, pursuant to 11 U.S.C. §362(l)(5)(D), shall arrange for the prompt transmittal of the rent so deposited to the lessor. If the debtor is required by 11 U.S.C. §362(l)(1)(B) to deposit with the Clerk the rent becoming due during the 30-day period after the filing of the bankruptcy petition, the following procedures shall apply. Any deposit of rent made by or on behalf of the debtor, pursuant to §362(l)(1)(B), shall be made in the form of a certified check or money order payable to the order of the lessor, and delivered to the Clerk upon the filing of the petition and the certification made under §362(l)(1)(A). Upon the Clerk's receipt of a certified check or money order payable to the order of the lessor, with a copy of the judgment for possession, tendered by the debtor pursuant to §362(l)(1), the Clerk is directed to promptly transmit the certified check or money order to the lessor, by certified mail, return receipt requested, to the address listed on the petition. Consistent with the requirements set forth in this paragraph (J), the deposit and transmittal of rent funds shall conform to procedures established by the Clerk.

16. INTERIM PROCEDURE 4002-1 DUTIES OF THE DEBTOR

(A) **Tax Information Under 11 U.S.C. §521:**

(1) **Procedure for Debtor to Cooperate with Trustee and Provide Requesting Trustee and Creditor with Pre-petition Tax Information; Dismissal of Debtor's Case:**

(a) **Debtor's Duty to Cooperate with Trustee and Provide Pre-petition Tax Information to Requesting Trustee and Creditor; Debtor's Duty Not to File with the Court:** The debtor shall provide the tax information specified in §521(e)(2)(A)(i) to the trustee and any requesting creditor within the time specified in §521(e)(2)(A)(ii). The debtor is not required to file any tax information specified under 11 U.S.C. §521(e)(2)(A)(i), (A)(ii) or (C) with the Court.

(b) **Dismissal of Debtor's Case:** Pursuant to 11 U.S.C. §521(e)(2)(B), the Court shall dismiss the debtor's case if the debtor fails to comply either with §521(e)(2)(A)(i) or (ii) unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor. Absent the debtor making such a demonstration, the Court shall dismiss the debtor's case either upon:

(i) certification by the trustee wherein the Clerk shall issue a rule to show cause to the debtor and the debtor's attorney, if any, and set the rule for a hearing; or

(ii) upon motion by a creditor and after a hearing on service of the motion by the creditor on the debtor and debtor's attorney, if any. Any motion to dismiss filed by a creditor must state with particularity that the creditor timely requested a copy of the tax return under Interim Rule 4002(b)(4).

(2) ***Procedure for Requesting Debtor to File Post-petition Tax Information with the Court:***

(a) ***Access to Debtor's Tax Information:*** To gain access to a debtor's tax information under 11 U.S.C. §521(f)(1), (2), or (3) to a debtor's tax information, in a case under chapter 7, 11, or 13, where the debtor is an individual, or under §521(f)(4), to a statement of the income and expenditures of the debtor ("statement"), where the debtor is an individual in a case under chapter 13, the United States trustee, trustee, or party in interest, including a creditor, shall file with the Court a written request that the debtor file copies of tax information, or statement, with the Court pursuant to the applicable subsection(s) of §521(f) and served on the debtor and debtor's attorney, if any. The Court may request tax information or statement on its own initiative. The debtor shall file the requested tax information or statement, as applicable, shall be filed by the debtor with the Court at the times set forth in the appropriate subsections of §521(f). The Court need take no further action regarding the written request absent the filing of a motion with the Court by the movant to obtain access to the debtor's tax information, filed by the debtor.

(b) ***Motion by Requestor for Court Order Directing Debtor to File Tax Information or Statement:*** If the debtor does not file the requested tax information or statement with the Court, the movant may file a motion requesting that the Court enter an order directing the debtor to file the requested tax information or statement with the Court. The motion shall be set for hearing in accordance with LBR 9013-1. The Court may determine the motion without oral hearing in accordance with LBR 9013-1(L).

(c) ***Motion Requesting Access to Tax Information or Statement:*** The movant may file a motion with the Court requesting access to tax information or statement filed by the debtor. The motion shall be served on the debtor and the debtor's attorney, if any. The motion shall include:

- (i) a description of the movant's status in the case, to allow the Court to ascertain whether the movant may properly be given access to the requested tax information or statement;
- (ii) a description of the specific tax information or statement sought;
- (iii) a statement indicating that the information or statement cannot be obtained by the movant from any other source; and
- (iv) a statement showing a demonstrated need for the tax information or statement.

The motion shall be set on hearing in accordance with LBR 9013-1. The Court may determine the motion without an oral hearing in accordance with LBR 9013-1(L).

(d) ***Safeguarding the Confidentiality of Tax Information or Statement:*** If the Court grants the motion filed by the movant pursuant to Interim Procedure 4002-1(A)(2)(c) the tax information or statement shall be confidential and shall not be disseminated or disclosed to any person or entity or used for any purpose other than in connection with the case. Sanctions may be imposed for improper use, disclosure, or dissemination.

(e) This Interim Procedure 4002-1(A) shall have no effect on discovery proceeding under Federal Rule of Bankruptcy Procedure 2004, 7026, or 7028-7037.

Comments

4002-1(A) Subparagraph (A)(1)(a) more fully references the noted relevant Bankruptcy Code subsections. The heading to subparagraph (A)(2) is amended to clarify that it references “post-petition” tax information. Changes to subparagraph (A)(2)(a) are stylistic in nature. Subparagraph (A)(2)(e) is new. It is intended to make explicit that Interim Procedure 4002-1(A) has no effect on the discovery rules listed in that new subparagraph. [Change effective 9/1/06.]

(B) *Dismissal for Failure to File Tax Returns:*

(1) In cases governed by 11 U.S.C. §521(j)(1), a taxing authority may file a written request with the Court certifying that the debtor had not filed a tax return that became due either after the case was commenced or after properly obtaining an extension to file the return with the taxing authority and requesting that the Court enter an order to dismiss or convert the debtor’s case. The taxing authority shall submit such a request in the form of a motion.

(2) As provided for in 11 U.S.C. §521(j)(2), if the debtor does not, within 90 days after the request is filed with the Court, file the return or obtain an extension of time to file the return from the taxing authority, the taxing authority may file a motion with the Court, requesting that the Court enter an order to dismiss or convert the debtor’s case. The taxing authority shall serve the motion on the debtor and debtor’s attorney, if any. The motion shall be set for hearing in accordance with LBR 9013-1. The Court may determine the motion without an oral hearing in accordance with LBR 9013-1(L).

(C) *Dismissal for Failure to Provide Payment Advices or Other Evidence of Payment:* Upon certification by the trustee that the debtor failed to provide the trustee with all payment advices or other evidence of payment, as required by Interim Procedure 1007-1(I), the Clerk shall issue a rule to show cause to the debtor and the debtor’s attorney, if any, and set the rule for a hearing.

17. INTERIM PROCEDURE 4008-1 REAFFIRMATION

(A) *Notice of Rights Under 11 U.S.C. §524(d):* The Clerk shall, within (15) days after the discharge has been granted, give written notice to each discharged debtor of the debtor's rights under 11 U.S.C. §524(d).

(B) *Reaffirmation Agreements:* Any debtor or creditor seeking to reaffirm a debt of the kind specified in 11 U.S.C. §524(c) shall file with the Clerk a properly completed form of reaffirmation agreement substantially in compliance with A.O. Form B240 Reaffirmation Agreement. The Clerk is directed to provide such form to the public upon request.

(C) *Court Consideration of Reaffirmation Agreement:* If the reaffirmation agreement is based on a consumer debt not secured by real property of the debtor, the reaffirming debtor or the creditor may, or if the debtor is not represented by an attorney either in the debtor’s case or during the negotiation of the reaffirmation agreement, the debtor must request that a reaffirmation hearing be scheduled pursuant to 11 U.S.C. §524(d)(2). If there exists a presumption of undue hardship that would require a hearing before the Court, the debtor must request that a hearing on the reaffirmation agreement be scheduled.

(D) **Filing of Reaffirmation Agreements in Closed Cases:** A reaffirmation agreement entered into prior to discharge that is in compliance with 11 U.S.C. §524(c) and §524(d), and in the form of a properly completed reaffirmation agreement substantially in compliance with A.O. Form B240 Reaffirmation Agreement, may be filed in a closed case.

18. INTERIM PROCEDURE 5005-1 FILING OF PETITIONS, PLEADINGS AND OTHER PAPERS

(D) **Additional Requirements:**

(1) **Voluntary Petitions:** Each petition filed must include an unsworn declaration with the signature of all debtors and must be verified by the signature of the debtor's attorney, if any. More than one entity cannot be listed as the debtor, except that husband and wife may file a joint petition.

(a) Each petition filed must be accompanied by:

(i) the proper filing fee in a form other than the debtor's personal check, or

(ii) an "Application to Pay the Filing Fee in Installments" accompanied by the proper first installment payment. The application must conform to the requirements of Local Bankruptcy Rule 1006-1, or

(iii) if applicable, in a chapter 7 case filed by an individual, an "Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments." The application must conform to the requirements of Interim Procedure 1006-1(F).

19. INTERIM PROCEDURE 9010-1 REPRESENTATION AND APPEARANCES; POWERS OF ATTORNEY

Requirement for Counsel: Except for filing a proof of claim, request for notices, or notice/service, notice of appearance, reaffirmation agreement, notice of transfer of claim, or a transcript of court proceeding, no party or entity other than a natural person acting in his or her own behalf or, to the extent permitted by §304(g) of Pub. L.103-394, a child support enforcement agency, may appear in a bankruptcy case or proceeding (except at a chapter 7 or 13 meeting of creditors to the extent permitted under 11 U.S.C. §341(c)), sign pleadings, or perform any act constituting the practice of law except by counsel permitted to appear under LBR 2090-1. This rule applies to corporations, partnerships, limited liability companies, associations, and trusts, as well as to individuals acting in a representative capacity (such as under a power of attorney) for another. Any petition, pleading or paper, other than those set forth in this rule, filed on behalf of an entity that is not a natural person acting in his or her own behalf and not signed by counsel permitted to appear under LBR 2090-1 shall be stricken by the Clerk, or in the case of a petition, dismissed, unless the deficiency is cured within ten days of the mailing or delivery of a notice of deficiency.