

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
ROYBAL BUILDING
255 EAST TEMPLE STREET, SUITE 1580
LOS ANGELES, CALIFORNIA 90012

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05-BK-B

SAMUEL L. BUFFORD
JUDGE

(213) 894-0992

September 8, 2005

Mr. Peter McCabe
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Re: Bankruptcy Rule 4003(b)

Dear Pete:

While not an issue raised by the new bankruptcy law, this is a good time to amend Rule 4003(b) to undo the problems caused by the Ninth Circuit decision, *Smith v. Kennedy (In re Smith)*, 235 F. 3d 472 (9th Cir. 2000), where the court held that, in a case converted from chapter 11 to chapter 7, the chapter 7 trustee never has an opportunity to object to the exemptions claimed by the debtor. The ruling presumably applies equally in chapter 12 and chapter 13 cases.

The *Smith* case is problematic because, in a new chapter 11 case filed by an individual, the deadline for filing an objection to exemptions arises 30 days after the meeting of creditors is concluded. At this early point in a chapter 11 case the creditors are focusing on how the debtor's business can be reorganized, rather than on the status of the debtor's exemptions if the case should be converted to chapter 7. The situation is the same in a case filed under chapter 12 or chapter 13.

It is the chapter 7 trustee who has the principal responsibility for dealing with a debtor's exemptions. This responsibility does not arise until conversion of a case to chapter 7 and a trustee first appears on the scene. However, a case originally filed under chapter 11, chapter 12 or chapter 13 is rarely converted to a case under chapter 7 until the period for objecting to exemptions has expired.

The circuits are split on this issue. In a decision issued less than three weeks after the *Smith* decision, the Eighth Circuit held in *Alexander v. Jensen-Carter (In re Alexander)*, 236 F. 3d 431 (8th Cir. 2001), that after the conversion of a chapter 13 case to a chapter 7 case the chapter 7 trustee has a right to object to the claimed exemptions. The Second

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Circuit is in accord with *Smith*: see *In re Bell*, 225 F. 3d 203, 213 (2nd Cir. 2000).

As a matter of policy, I believe that a chapter 7 trustee in a converted case should have the opportunity to object to the exemptions claimed by a debtor. Thus, Rule 4003(b) should be revised to provide a new 30-day period for objecting to property claimed as exempt after the conversion of a case under one chapter to a case under another chapter of the code.

Very truly yours,



Samuel L. Bufford

SLB:kd
cc: Hon. Christopher Klein