

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA**

08-BK-003

ROBERT E. GRANT, JUDGE

**2128 E. ROSS ADAIR FEDERAL BUILDING
1300 SOUTH HARRISON STREET
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February 5, 2009

Mr. Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Administrative Office of the U.S. Courts
Thurmond Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, DC 20544

Re: Draft of proposed amendments to the Federal Rules of Bankruptcy Procedure

Dear Mr. McCabe

I would like to take this opportunity to comment upon two of the changes which have recently been proposed for the Federal Rules of Bankruptcy Procedure. They are the proposed addition of subdivision (b) to Rule 5009 and the proposed addition of subdivision (b) to Rule 7001

Proposed Rule 5009(b) would require the Clerk of the Bankruptcy Court to issue a notice if, within 45 days following the date set for the meeting of creditors, a Chapter 7 or Chapter 13 debtor fails to file the statement indicating that it completed the required post-petition financial management education. While there is certainly some virtue in reminding debtors that filing this statement is a requirement for discharge, to do so at the time and in the fashion proposed by the committee seems to place an unnecessary burden upon the clerk's office. The proposed rule creates an entirely new deadline which the clerk's office must track and will require the issuance of a notice that is not required under existing procedures, to say nothing of the additional expense that will come from having to serve a not insubstantial number of such notices. There is an easier way to get that same information to debtors, a way which will not impose any additional burdens or expense upon the clerk's office, the court, or the BNC.

Rather than creating and then tracking new deadlines and issuing new notices, the admonition the proposed change seeks to give individual debtors could simply be included in the notice of the § 341 meeting, which is given to all concerned at the commencement of the case. (An example of a 341 notice with such language accompanies this letter) Doing so is not only simpler, cheaper, and more efficient, but it also puts all of the relevant deadlines for both debtors and creditors to make certain filings in a single place and in a single notice. It will also avoid the

perceptual problems that might arise if the proposed rule creates the impression that the rules and the court are debtor-oriented, rather than following a neutral course as to the rights of both debtors and creditors. After all, we do not remind creditors of the impending expiration of the deadlines for filing claims, complaints to determine dischargeability of debt or to object to the debtor's discharge. Instead, we advise them of those deadlines in the § 341 notice and expect them to act accordingly. There is no reason to structure the rules and the court's procedures in a way that appears to be more solicitous of the interests of debtors on the issue of discharge than they are of the interests of creditors. This is especially so if one remembers that a debtor's failure to timely file the required statement does not prevent them from getting a discharge – the case can usually be reopened to allow that to happen – whereas a creditor's failure to act within the time required may be fatal to its claim.

The proposed change to Rule 7001(b) would allow some objections to discharge to be raised through a motion rather than an adversary proceeding as is now the case. These are the objections based upon the proposition that the debtor has recently obtained a discharge and not enough time has passed since doing so to allow it to obtain another. While the goal of trying to make any litigation cheaper and more efficient is always a laudable one, I fear the confusion that will be created by having two different procedures, both with the same objective – the denial of a discharge for one reason or another – will far outweigh any efficiencies the rule change might otherwise create.

Despite the language of the current rules, this court sees a large number of “motions” objecting to discharge (and to determine dischargeability), even though all such issues are to be raised through an adversary proceeding. Once we allow some discharge objections to be raised through a motion, but require others to be raised through an adversary proceeding, I have no doubt that the number of inappropriate “motions objecting to discharge” will increase significantly; unnecessarily increasing the court's workload as it tries to sort through the confusion. There is also the problem that will arise when a creditor having more than one basis for objecting to a discharge, one of which may be permitted by a motion and one of which requires an adversary proceeding – say § 727(a)(8) or (9) combined with a § 727(a)(4) false oath for not having disclosed the prior case on the petition – will try to prosecute them both through a motion. Such encounters will be inevitable and trying to untangle them will complicate the court's workload. Rather than create different procedures for similar proceedings, as the proposed rule would do, it is simpler and more appropriate to have a single procedure that is applicable to all proceedings designed to put the debtor's right to a discharge in issue.

Given that errors will undoubtedly occur and inappropriate motions objecting to a discharge will be filed, how should the courts respond? Remember, objections to discharge are time sensitive and must be filed by a particular deadline. Should the court review every “motion” objecting to discharge to make sure it is procedurally appropriate? If not, what then? Deny it immediately? Alternatively, should the court wait until any hearings are held to rule upon the motion's procedural propriety? How will we deal with improperly filed objections when, by the time the court rules, the deadline for filing the required adversary proceeding has passed? These questions will provide rich fodder for litigation, litigation that but for the proposed rule change would be unnecessary.

Unfortunately, far too few creditors (or their lawyers) will readily understand the distinctions between objections to a discharge based upon §§ 727(a)(8), (a)(9) or 1328(f) and objections having

a different foundation, or the differences between adversary proceedings and contested matters. Rather than simplifying procedures, the proposed amendment makes the bankruptcy process more technical and more difficult, and will increase the perception that it is an arcane area of practice which the uninitiated should avoid. When it was originally enacted the current Bankruptcy Code sought to dispel that perception; the rules of procedure should not reinvigorate it.

If the committee should, notwithstanding the additional confusion it will create, decide to retain the proposed 7001(b) and allow some discharge objections to be raised through a motion, then I would suggest it has not gone far enough in specifying the procedures to be followed. Once the motion is filed, then what? To say that it is governed by Rule 9014 adds very little. Is the court required to hold a hearing on the objection, or will notice and the opportunity to object suffice? How much notice should be given, either of the hearing or of the deadline for filing objections? Should it be the 30 days now required, 25, 20 or 15 days? Any of these deadlines have counterparts elsewhere in the bankruptcy rules, a reasonable argument can be made for each of them, and, given that they can all be derived from other matters to which Rule 9014 applies, any of them would appear to satisfy its requirement of giving the debtor "reasonable notice and opportunity" to respond. Thus, the proposed change is certain to produce a lack of procedural uniformity between different courts and different judges, increasing the confusion it will create. Consequently, if the rule is to be changed as proposed, I would suggest the committee also make appropriate changes elsewhere in the rules specifying precisely how the court is to process this type of discharge objection, how much notice will be required, and to whom

I appreciate the opportunity to comment upon the proposed rules, as well as the time and trouble the committee will devote to considering my comments. For that I thank you.

Respectfully yours,

Robert E. Grant

P.S.

If proposed rule 7004(b) is adopted, I agree with Judge Kressel's comment that it would be misplaced. A more appropriate placement would be to revise 7001(4) to read. "a proceeding to object to or revoke a discharge, other than a proceeding objecting to discharge under §§ 727(a)(8), (a)(9), or 1328(f),"

cc. Christopher DeToro, Clerk
Chief Judge Harry Dees, Jr
Judge Phillip Klingeberger

UNITED STATES BANKRUPTCY COURT
Northern District of Indiana

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 1/2/09

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. **NOTE** The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Eric Jason Thompson
11536 Antwerp Road
Grabill, IN 46741

Laura Christine Thompson
fka Laura Christine Engstrom
11536 Antwerp Road
Grabill, IN 46741

Case Number
09-10001-reg

Social Security/Taxpayer ID/Employer ID/Other Nos
xxx-xx-8242
xxx-xx-8906

Attorney for Debtor(s) (name and address)

Yvette Gaff Kleven
Skekloff, Adelsperger & Kleven, LLP
927 South Harrison Street
Fort Wayne, IN 46802
Telephone number: (260) 407-7000

Trustee assigned by U S Trustee (name and address):

Mark A. Warsco
110 West Berry St
P.O. Box 11647
Fort Wayne, IN 46859
Telephone number (260) 469-0256

Meeting of Creditors:

Date **February 10, 2009**

Time **09:00 AM**

Note: **Professional Dress Required!**

Photo ID Required!

Proof of SSN Required!

Location **Room 1194, 1300 South Harrison Street, Fort Wayne, IN 46802**

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on reverse side

The presumption of abuse does not arise

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts: 4/13/09

The debtor must file a certification of completion of an instructional course concerning personal financial management (Official Form 23) with the clerk within sixty days of the meeting of creditors. The failure to do so may result in the case being closed without issuing a discharge.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

No two-sided filings permitted pursuant to N.D.Ind. L.B.R. B-5005-2(a)

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditors with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office:

1300 S Harrison St
Fort Wayne, IN 46802
Telephone number 260-420-5100

For the Court:

Clerk of the Bankruptcy Court
Christopher M. DeToro

Hours Open: Monday - Friday 9:00 AM - 4:00 PM

Date 1/5/09

Debtors must submit to the Trustee's office, by E-mail, PDF attachments of the following documents no later than 7 days prior to Meeting of Creditors or meeting may be postponed (Please contact the trustee for e-mail address)

-Copies of all payment advices or other evidence of income received by the debtor within 60 days of filing.

-Copy of the most recent year filed state and federal tax return.

-Life insurance declaration showing cash value and beneficiary (if scheduled).

-Statements showing balance of bank accounts, brokerage account, etc. as of petition date (may provide at Meeting of Creditors).