

08-BK-L

Keith
Lundin/TNMB/06/USCOURTS

To rules_comments@ao.uscourts.gov

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Subject rule suggestion -- holding open meeting of creditors

I invite the Advisory Committee on Bankruptcy Rules to consider a new rule fixing the procedure for "holding open" a meeting of creditors pursuant to 11 USC section 1308(b).

The problem starts in section 1308(a) which mandates -- not later than the day before the first date scheduled for the meeting of creditors -- debtors in Chapter 13 cases must file all state and federal tax returns required during the four year period prior to the petition. If not all tax returns have been filed, section 1308(b) permits the trustee to "hold open" the meeting of creditors for "a reasonable period" to allow the debtor to file missing returns. Under section 1308(b)(1) and (2) the hold open period can be as long as 120 days without court approval, plus up to an additional 30 days with court approval. The kicker is in section 1307(e) -- on request of a party in interest, the court "shall" convert or dismiss a Chapter 13 case upon failure of the debtor to file a tax return under section 1308.

It is not uncommon for debtors to come into a Chapter 13 case missing required tax returns. Because of the accelerated timing of confirmation in section 1324(b) and the mandate in Bankruptcy Rule 2003 that the meeting of creditors in a Chapter 13 case take place in 20 - 50 days of the petition, it is also common that Chapter 13 debtors need more time to complete the filing of four years of required tax returns. To avoid the risk of mandatory conversion or dismissal under section 1307(e), an increasing number of Chapter 13 debtors must obtain a hold open period for the meeting of creditors.

The problem then becomes that there is no Bankruptcy Rule addressing procedure for holding open a meeting of creditors. Bankruptcy Rule 2003(e) permits "adjournment" of a meeting of creditors by announcement and without further notice, but "hold open" in section 1308(b) suggests something different and the death sentence in section 1307(e) is too severe to leave the issue this loose. Debtors and "parties in interest" have a stake in knowing with certainty whether a meeting of creditors has been held open and for how long. The bankruptcy courts have acknowledged the absence of clear procedure in this area. See, e.g., *In re Kuhar*, 2008 WL 2894893 (Bankr. E.D. Pa. June 24, 2008).

The solution might be the addition of a subsection to Bankruptcy Rule 2003 along these lines.

(f) HOLD OPEN. The meeting may be held open as permitted by section 1308(b) of the Code by Announcement of the trustee at the meeting. The trustee shall file a Notice of Hold Open Period. The Announcement and Notice shall specify the beginning and ending dates of the hold open period. Subsequent extensions of the hold open period within the limits specified in section 1308(b) shall be filed by the trustee.

Keith M. Lundin
701 Broadway
Nashville, TN 37203
(615) 736-5586
(615) 736-7705 (fax)
<keith_lundin@tnmb.uscourts.gov>