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11-BK-009

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November 21, 2011

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

**Re: Comments on proposed amendments to the Federal Rules of Bankruptcy
Procedure and Official Forms**

Dear Mr. McCabe:

Proposed amended Schedule C offers the debtor one of two options: To assert a dollar specific exemption in the particular asset, or simply claim the "Full fair market value of the exempted property" as being exempt – however much of that may be as of the petition date.

I believe it is a mistake to suggest that the debtor (desiring to exempt 100% of the value of the property, regardless of what that value might be) should assert an exemption for the "full fair market value." Exemptions speak as of the date of bankruptcy, and the exemption amount (however determined) is fixed as of that date. If the debtor owns property which, by law, is fully exempt (a retirement account, for example; or professionally prescribed health aids which are fully exempt under Indiana law), a debtor's claim of exemption as to the full fair market value (as of the date of bankruptcy) opens up a new can of worms. What if the otherwise-exempt asset increases in value after the date of bankruptcy? Any increase in value above that which the debtor has claimed belongs to the trustee, see *In re Polis*, 217 F.3d 899 (7th Cir. 2000).

The purpose of *in rem* exemptions is to allow certain items authorized by statute to be declared exempt, regardless of value. Thus introducing a valuation limitation (fair market value or otherwise) is a mistake. The second box should simply read "ALL" or "100%." That will make it abundantly clear to trustees and to creditors that the debtor seeks to exempt the entire item of property, regardless of its value. It should be fairly simple for a trustee or creditor to look at the exemption law to see whether, in fact, the law allows an unlimited/value exemption for that type of property.

Very truly yours,

Shipley & Associates



Grant F. Shipley

GFS/mmk