

**COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544**

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January 15, 2019

Honorable Dennis Dow  
United States Bankruptcy Court  
Charles Evans Whittaker  
United States Courthouse  
400 East Ninth Street, Room 6562  
Kansas City, MO 64106

Dear Judge Dow:

I write on behalf of the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee) to request that the Advisory Committee on Bankruptcy Rules (Rules Committee) consider amendments to Rules 3011 and 9006(b) of the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules).

In December 2017, the Bankruptcy Committee established an Unclaimed Funds Task Force (Task Force) to explore options for improving the judiciary's management of unclaimed funds attributable to bankruptcy courts. The Task Force is comprised of district and bankruptcy judges, clerks of court, and liaisons from the Bankruptcy Administrators program and the Department of Justice Executive Office for United States Trustees. Two of the overarching goals of the Task Force are to reduce the increasing unclaimed funds balance and future deposits<sup>1</sup> and to mitigate the potential liability borne by clerks of court in connection with record-keeping and payments of unclaimed funds.<sup>2</sup>

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<sup>1</sup> As of July 2018, approximately \$299 million in unclaimed funds was attributable to the bankruptcy system. Of that amount, \$82,961,000 was held at the bankruptcy court level (in the 6047BK account), and \$216,623,000 was held at the United States Treasury (in the 6133BK account).

<sup>2</sup> The clerks' liability arises under statute, with additional guidance set out in the *Guide to Judiciary Policy*. See 28 U.S.C. § 613 (setting forth the disbursing officer and certifying officer's

The Task Force developed several proposals and made recommendations to the Bankruptcy Committee at its December 2018 meeting, including a recommendation approved by the Bankruptcy Committee to request that the Rules Committee consider amendments to Bankruptcy Rules 3011 and 9006(b).

The Bankruptcy Committee's request and the proposed amendments to the Bankruptcy Rules relate to another Task Force recommendation that the Bankruptcy Committee intends to make to the Judicial Conference at its March 2019 session. The Bankruptcy Committee will recommend that the Judicial Conference seek legislation that would set a statute of limitations for the filing of an application to withdraw unclaimed funds attributable to bankruptcy courts and expressly eliminate any liability borne by the clerks of court. Specifically, an amendment to 11 U.S.C. § 347(a) would provide that unclaimed funds remain in the bankruptcy court account for five years, at which time the rightful owner (and all other parties) would be barred from asserting any claim against any party to retrieve those funds, thereby eliminating the clerks' (and any other party's) liability exposure.

As you are aware, the process of enacting legislation can be unreliable and take years to accomplish, if it is accomplished at all, and the proposed legislation will face all the usual legislative hurdles. Amending the Bankruptcy Rules would achieve the same goals by setting a deadline for the filing of an application to withdraw unclaimed funds.<sup>3</sup> Like the proposed statutory amendment, the proposed amendment to Bankruptcy Rule 3011 would provide that unclaimed funds remain in the bankruptcy court account for five years, at which time the rightful owner (and all other parties) would be barred from asserting any claim against any party to retrieve those funds. The proposed amendment to Bankruptcy Rule 9006(b), which addresses extending time under the Bankruptcy

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responsibilities and liabilities); 31 U.S.C. §§ 3527(a), 3527(c), 3528(b) (setting forth the disbursing officer, certifying officer, and accountable official's relief from liability); *Guide to Judiciary Policy*, Vol. 13, Ch. 13, §§ 1315(a), 1315(b), 1320(a) (setting forth the accountable officer's responsibilities, liabilities, and relief from liability). The court is indefinitely responsible for keeping records of the claim against the funds. The clerk of court, as the officer tasked with recordkeeping at the court, is required to keep a record of the property and the owner's pertinent information indefinitely for the purposes of ensuring that any requests for withdrawal of unclaimed funds are paid to the rightful owners of such funds. Clerks therefore may be exposed to personal liability to the extent that the court erroneously pays unclaimed funds to the wrong owner.

<sup>3</sup> Imposing a deadline in the Bankruptcy Rules on substantive rights created by the Bankruptcy Code is not without precedent. In fact, a number of substantive rights created by the Bankruptcy Code are subject to deadlines set by the Bankruptcy Rules. For example, the right to object to a debtor's discharge under certain subsections of 11 U.S.C. § 727 is limited by Bankruptcy Rule 4004(a), and the right to file a complaint to determine the dischargeability of a debt under 11 U.S.C. § 523(c) is limited by Bankruptcy Rule 4007(c).

Honorable Dennis Dow  
Page 3

Rules, would provide that the deadline set pursuant to Bankruptcy Rule 3011 cannot be enlarged. The proposed language amending the Bankruptcy Rules is included in the attachment.

While these proposed amendments to the Bankruptcy Rules may not completely eliminate clerks' liability in connection with unclaimed funds, the Bankruptcy Committee believes that they will greatly reduce the increasing unclaimed funds balance and future deposits and provide some protection to clerks regarding their liability exposure.

Chief Judge Mary P. Gorman (Bankr. C.D. Ill.), the Bankruptcy Committee liaison to the Rules Committee and a Task Force member, and I are both available should you have any questions or wish to discuss further.

Sincerely,



Karen E. Schreier, Chair

cc: Honorable David G. Campbell  
Honorable Stuart M. Bernstein  
Honorable Mary P. Gorman  
Ms. Mary Louise Mitterhoff  
Ms. Michele E. Reed  
Ms. Rebecca Womeldorf  
Ms. Bridget M. Healy  
Mr. Scott Myers

Attachment

**Proposed Amendments to Federal Rules of Bankruptcy Procedure 3011 and 9006(b)**

Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases

(a) List of Names, Addresses, and Amounts. The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

(b) Deadline for Filing Petition for Unclaimed Funds. In any case where remaining property of the estate is paid into court pursuant to § 347(a) of the Code, a request by a claimant seeking an order directing payment to such claimant of such money must be filed no later than five years after (1) the trustee files the list pursuant to Rule 3011 of all known names and addresses of the entities and the amounts that they are entitled to be paid or (2) [date of enactment of new Bankruptcy Rule], whichever occurs later.

(c) Bar on Claims to Unclaimed Funds. After five years from (1) the filing of the list pursuant to Rule 3011 or (2) [date of enactment of new Bankruptcy Rule]), whichever occurs later, all persons, including any claimant who does not file a request for an order directing payment to such claimant within five years, will be forever barred and enjoined from asserting any claim against the debtor, the court, or any other party or entity on account of such money.

Rule 9006. Computing and Extending Time

(b) Enlargement.

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(2) Enlargement Not Permitted. The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 3011(b) and (c), 7052, 9023, and 9024.