

From: [Brubaker, Ralph](#)
To: [Dennis Dow](#)
Cc: [RulesCommittee Secretary](#); [Lawless, Robert M](#); [Bruce Markell](#); [Brubaker, Ralph](#)
Subject: proposed revision to Law Professors' Proposal for Turnover dated Jan. 29, 2021
Date: Thursday, February 04, 2021 6:54:56 PM

Dear Judge Dow,

I write in regard to the proposal submitted by 45 law professors on January 29, 2021, to revise the procedures for turnover in the Federal Rules of Bankruptcy Procedure ("Law Professors' Proposal for Turnover"). After that proposal was sent to law professors to solicit their agreement to join the letter proposing those amendments, I and Professors Bob Lawless and Bruce Markell noticed a potential ambiguity in one of the proposed amendments.

In order to remove any potential uncertainty and make clear that an agreement for debt turnover under Bankruptcy Code § 542(b) could be approved without a separate motion to approve the agreement if a § 542(b) motion for turnover of the debt has already been filed and served, we would suggest that "pay," and "money," be added to the beginning of the first two series, respectively, in proposed Rule 4001(d)(1)(A)(vi), which would then read in its entirety as follows:

(vi) an agreement to pay, deliver or account for money, property or recorded information under §521(a)(4), §542 or §543 of the Code.

This proposed revision to the Law Professors' Proposal for Turnover was not part of the proposal that any of the other signatory law professors agreed to propose and support. This proposed revision to the Law Professors' Proposal for Turnover, therefore, is being submitted for the Advisory Committee's consideration (in conjunction with its consideration of the Law Professors' Proposal for Turnover) solely by me and Professors Lawless and Markell.

For the Advisory Committee's convenience, the entirety of the Law Professors' Proposal for Turnover, revised as suggested above, is attached.

Sincerely,
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Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

....

(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT.

(1) *Motion; Service.*

(A) *Motion.* A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

(i) an agreement to provide adequate protection;

(ii) an agreement to prohibit or condition the use, sale, or lease of property;

(iii) an agreement to modify or terminate the stay provided for in §362;

(iv) an agreement to use cash collateral; ~~or~~

(v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property; or

(vi) an agreement to pay, deliver or account for money, property or recorded information under §521(a)(4), §542 or §543 of the Code.

....

(4) *Agreement in Settlement of Motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule or Rule 6012 or §521(a)(4), §542 or §543 of the Code was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following:

....

(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001 or Rule 6012 or §521(a)(4), §542 or §543 of the Code; or

....

Rule 6012. Turnover of Property

(a) MOTION. A motion to enforce an entity's obligation to deliver and account for property under §542(a) of the Code must be made in accordance with Rule 9014.

(b) CONTENTS. The motion shall state:

(1) the property the entity must deliver or for which it must account,

(2) the value of the property,

(3) the name of each entity with an interest in the property and the nature of that interest,

(4) for any entity whose interest is a lien, the amount of the entity's claim, and

(5) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the property.

(c) SERVICE. The movant shall serve the motion on:

(1) any entity with an interest in the property;

(2) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and

(3) any other entity the court directs.

(d) RESPONSE. Within seven days after service of the motion, any entity against whom relief is sought must file and serve a response that states:

(1) the nature of the entity's interest in the property,

(2) the value of the property,

(3) if the interest is a lien, the amount of the entity's claim, and

(4) whether the entity requests the court to order adequate protection under §363(e). Any such request must state with particularity the adequate protection the entity requests including, if applicable, the amount of any cash payments or the amount or type of insurance protecting the interest of the entity.

(e) HEARING.

(1) *Timing.*

(A) For a motion brought by a debtor in a case under chapter 13, the court must hold a hearing within 10 days after service of the motion.

(B) In all other cases, the court must hold a hearing within 21 days after service of the motion.

(2) Action. At the hearing, the court may enter any appropriate orders including:

(A) ordering the entity to deliver or account for the property;

(B) ordering the debtor or trustee to provide adequate protection to the entity; or

(C) directing further hearings, briefing, pleadings, discovery, or other proceedings consistent with Rule 9014.

(f) EX PARTE RELIEF. Relief may be granted to a debtor in a case under chapter 13 without prior notice only if (A) the motion is verified, (B) it clearly appears from specific facts shown by affidavit or by the verified motion that in the absence of relief the debtor will suffer immediate and irreparable harm to the debtor's prospects for effective reorganization before the adverse party or the attorney for the adverse party can be heard in opposition, and (C) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief without prior notice shall immediately give oral notice thereof to the adverse party and forthwith mail or otherwise transmit to the adverse party a copy of the order granting relief. On two days notice to the debtor or on shorter notice as the court may prescribe, the adverse party may appear and move for reconsideration of the relief granted or to prohibit or condition the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(g) NO STAY OF TURNOVER ORDER. Notwithstanding Rule 4001(a)(3) and Rule 6004(h), an order entered under this rule or §521(a)(4), §542 or §543 of the Code is effective immediately, unless the court orders otherwise.

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(1) a proceeding to recover money or property, other than a proceeding ~~to compel the debtor to deliver property to the trustee, or a proceeding~~ under §521(a)(4), §542, §543, §554(b), or §725 of the Code, ~~or Rule 2017, or Rule 6002;~~

....