

From: Timothy Dore
Date: February 4, 2021 at 2:24:01 PM CST
To: Dennis Dow
Subject: Official Form Concern

Dennis:

Thank you for responding to my earlier email and your willingness to consider my concern.

My concern involves the presentation of the discharge deadlines in individual Chapter 11 cases in Official Form 309E1 (Box 7) and 309E2 (Box 8). Attached is the page of Official Form 309E2 that contains Box 8. On it, I have put the discharge deadline language into four boxes marked A, B, C, and D. I think it is easier to understand my concern while looking at the attachment.

The deadline to contest general discharge is the first date set for plan confirmation per FRBP 4004(a). The deadline to contest discharge of a particular debt (523(a)(2), (4), or (6)) is 60 days after the first date set for the 341 meeting per FRBP 4007(c).

In my view, the language in Official Form 309E1 (Box 7) and 309E2 (Box 8) does not accurately reflect the proper deadlines. Specifically, I have two concerns:

1. Box A indicates there is a deadline for objecting to general discharge and discharge of particular dates, and ends with a colon. Box B indicates a deadline of the first date set for hearing on plan confirmation. In my view, that is a problem because the confirmation hearing date is the deadline only for general discharge objections. I acknowledge that the colon at the end of Box A could be intended to have the reader look down to Box C instead of across to Box B, but that is inconsistent with how the dates for the other deadlines in Box 8 (i.e. proofs of claim and exemption objections) are set out. If the intent is to read down from Box A to Box C before reading across, at the very least, the language in Box B should be lowered to appear directly across from the general discharge bullet in Box C and the language in D should be lowered to appear directly across from the particular debt discharge bullet in Box C.
2. Box C indicates the need to file a complaint to contest either general discharge or discharge of particular debts. If one reads across to Box D, the date that gets filled in is the date for challenging discharge of particular debts only. Further it uses the term "dischargeability." One could wonder whether "dischargeability" refers to general discharge, discharge of particular dates, or both.

Perhaps I am reading Box 8 incorrectly. Regardless, I think it could either be corrected or improved. My suggestion would be to present the two discharge deadlines separately in a format consistent with the proof of claim and exemption objection deadlines that are also in Box 8. I would propose the following:

My Box A: "Deadline to file a complaint alleging the debtor is not entitled to receive a discharge of any debts under 11 USC 1141(d)(3):"

My Box B: "Filing deadline: First date set for hearing on confirmation of plan."

My Box C: "Deadline to file a complaint alleging a particular debt is excepted from discharge under 11 USC 523(a)(2), (4), or (6):"

My Box D: "Filing deadline: [blank to be completed with the date 60 days after the initial 341 meeting date]."

I would appreciate your thoughts, even if you think I am completely off base. If you would like to discuss, try my direct line.

Tim.

Timothy W. Dore
United States Bankruptcy Judge
Western District of Washington

6. Bankruptcy clerk's office

Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at <https://pacer.uscourts.gov>.

Hours open _____

Contact phone _____

7. Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.

_____ at _____
Date Time

Location: _____

Creditors may attend, but are not required to do so.

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

A File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:	B First date set for hearing on confirmation of plan. The court will send you a notice of that date later.
C You must file a complaint: <input type="checkbox"/> If you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) or <input type="checkbox"/> If you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).	D Filing deadline for dischargeability complaints: _____

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court]]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at <https://pacer.uscourts.gov>.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions:

The law permits debtors to keep certain property as exempt.

If you believe that the law does not authorize an exemption claimed, you may file an objection.

Filing deadline: 30 days after the *conclusion* of the meeting of creditors

9. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will generally remain in possession of the property and may continue to operate the debtor's business.

For more information, see page 3 ►