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LEONIDAS RALPH MECHAM  
Director

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

FRANCIS F. SZCZEBAK  
Chief

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

Bankruptcy Judges Division

November 30, 2001

Mr. Peter G. McCabe  
Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

Dear Mr. McCabe:

The Bankruptcy Judges Advisory Group, at its November 6, 2001, meeting, voted to suggest an amendment to the Federal Rules of Bankruptcy Procedure to establish a deadline for the filing of a reaffirmation agreement. Although 11 U.S.C. § 524(c)(1) requires such an agreement to be "made" before the granting of a discharge and 11 U.S.C. § 524(c)(3) requires that it be filed with the court, no provision in either the Bankruptcy Code or the Bankruptcy Rules establishes a deadline for the filing.

The absence of a deadline and the speed with which most courts close a chapter 7 case after discharge produce a situation, now widespread, in which reaffirmation agreements are filed after the case has been closed. In order to include these agreements in the official case file and make them part of the official case record, the case must be reopened. Rule 4008 provides a deadline of 30 days after the grant or denial of discharge for the court to hold a reaffirmation hearing and requires ten days notice of the hearing, but permits a debtor to wait until the actual hearing to file a motion for approval of a reaffirmation agreement. In most courts, it is the filing of a reaffirmation agreement without any accompanying affidavit from the debtor's attorney that triggers the scheduling of a hearing under § 524(d) and Rule 4008. If neither the creditor nor the debtor files the agreement, the court has no way to know a hearing should be scheduled. The lack of a deadline for filing the agreement means that the deadlines which are provided in Rule 4008 for giving notice and holding the hearing may pass with no hearing having been held.

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Although, under § 524(c)(6), a reaffirmation agreement concerning a debtor not represented by an attorney is not enforceable unless approved by the court, the debtor may not know that. Providing a deadline for filing a reaffirmation agreement -- one that is early enough to prevent the court from closing the case and affords sufficient notice time for a hearing -- would help assure that every reaffirmation agreement is subjected to review either by the debtor's attorney or the judge and that all requirements for enforceability are met.

It appears to the Advisory Group that, if the Advisory Committee on Bankruptcy Rules agrees that the rules should provide a deadline for filing a reaffirmation agreement, Rule 4008 would be the appropriate rule to amend. The Advisory Group is concerned chiefly about the substance of its suggestion, however, and defers to the expertise of the Advisory Committee on Bankruptcy Rules regarding how the objective might be accomplished.

Accordingly, I request that you refer this suggestion to the Advisory Committee on Bankruptcy Rules.

Sincerely,



Francis F. Szczebak

cc: Hon. David S. Kennedy  
Hon. A. Thomas Small  
Prof. Jeffrey W. Morris