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**From:** George Weiss [REDACTED]  
**Sent:** Monday, September 16, 2019 6:54 PM  
**To:** RulesCommittee Secretary  
**Cc:** A Benjamin Goldgar  
**Subject:** Another suggestion to supplement Judge Goldgar's suggestion at 19-BK-I

Madam Secretary,

A bankruptcy judge, Judge Goldgar, from the Northern District of Illinois, submitted a suggestion this cycle which has been numbered 19-BK-I.

The suggestion is a bit pessimistic that there is a rules based solution to his problem. However, when I read it, I noticed that I think there was one (or multiple possibilities).

Thus, I wrote his the email below to discuss it.

Judge Goldgar contacted a lawyer with the rules committee, who suggested I write the letter below as a separate suggestion and reference Judge Goldgar's suggestion.

Below is the verbatim email I sent Judge Goldgar, which contains my possible rules based solutions to Judge Goldgar's cited problems at suggestion 19-BK-I

----- Forwarded message -----

**From:** George Weiss [REDACTED]  
**Date:** Sun, Sep 1, 2019 at 4:55 PM  
**Subject:** your rules suggestion regarding the deceased debtor and 1328(a) DSO certifications  
**To:** [REDACTED]

Judge Goldgar,

I'm a Maryland consumer bankruptcy attorney. I'm writing because I saw your suggestion on the Rules website about the problem of the plain text of 1328(a), and the deceased debtor and the DSO certification problem.

I think you might want to consider the following and possibly updating or supplementing your suggestion.

In short: I think perhaps there is a Rule based solution...a rule about who can act for the debtor in certain situations.

As you know, FRBP 9010 already allows actions to be done by proxy or attorney in fact for the debtor. On its face, that's not limited to actions required by rule but appears to encompass any action required for any reason. Further, already FRBP 9001(5) allows corporate and partnership debtors to act by officer and/or partner or other authorized person (although that seems to be limited only to actions required by rule).

Obviously, there is no specific authority in the Code for corporations and partnerships to act by officer, nor for the bankruptcy courts to accept powers of attorney or other proxies for the debtor, yet nobody has ever challenged FRBP 9010 or FRBP 9001(5) as being illegally promulgated, and I doubt even the most hyper literal code reader would believe they are.

Furthermore, while FRBP 9001(5) seems limited to actions required by Rule, obviously corporations and partnerships must be allowed to act by proxy or they couldn't act at all, and thus, though nothing in the Code specifically allows it, corporations and partnerships act by proxy. (I.e. the code says nothing about who may act for a debtor and as such it seems reasonable to leave that hole to the Rules/Case law).

Perhaps FRBP 9010 can simply be updated to also specifically indicate that in the case of a deceased debtor who has a open estate, a personal representative and/or executor may act on his behalf in signing paperwork and making certifications, and, in the case of a deceased debtor without an active personal representative and/or executor, a person may sign paperwork and make certifications for the debtor who has a) an interest in the case and b) made a showing of knowledge of the facts so certified.

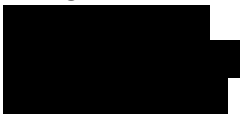
Moreover, there is also then no reason to excuse the DSO certification requirement entirely, and, in fact a deceased debtor who has NOT paid a DSO coming due before or after filing should NOT get a discharge under 1328(a), as a matter on which congress has spoken.

In contrast of course, we also would NOT want proxies doing credit counseling for the debtor or financial management for the debtor. (And nobody assumes that they can). Read literally though, I will note FRB 9010 on it's face, ready literally, would actually ALLOW that-although nobody would agree with that result on policy grounds. Moreover, as you note, because these requirements are tied to § 109(h(4), this is ok because if the debtor does die-then as you note, disability can excuse the financial management requirement per the code: and there would be thus neither reason nor statutory need to act by proxy.

So at the same time, FRBP 9010 should also be updated to prohibit proxy actions for individual debtors in the context of credit counseling and financial management, to eliminate the difference between what the law actually now says (an attorney could take the course for the debtor) and what everyone assumes the law to be (nobody but the debtor can take the course).

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George Weiss



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