

From: Laura Bartell

To: RulesCommittee Secretary

Subject: Suggestion for Amendments to Bankruptcy Rule 5009(b)

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I suggest that the Fed. R. Bankr. P. 5009(b) notice be sent at the conclusion of the § 341 meeting rather than 45 days after the first date set for that meeting. Bankruptcy Rule 1007(c) sets out the time by which a debtor must file the certificate evidencing completion of the financial management course. The provision of Rule 1007(c) dealing with the evidence of the personal financial management course originally required that it be filed “within 45 days after the first date set for the meeting of creditors.” The amendment to that provision increasing to 60 days after the first date set for the § 341 meeting for the certificate to be filed was intended to benefit debtors by giving them more time to complete the course and file. Presumably the 60-day period was selected to coincide with the requirements of Fed. R. Civ. P. 4004(c)(1), which requires the bankruptcy court to “forthwith grant the discharge” “on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e),” those times being fixed at “no later than 60 days after the first date set for the meeting of creditors under § 341(a).” Concurrently with that amendment, a new Fed. R. Bankr. P. 5009(b) was adopted, which requires that, if the debtor has not filed the certificate within 45 days after the first date set for the meeting of creditors (formerly the deadline for filing), the clerk must “promptly notify the debtor that the case will be closed without entry of a discharge” if the certificate is not filed by the 60-day deadline, which is fifteen days after the notice is sent.

Since the amendment to Rule 1007(c) and the adoption of Rule 5009(b), the number of cases closed without a discharge because of the debtor’s failure to file the certificate on a timely basis—although still very high—has plummeted. But the increased compliance with the deadline may be attributable not so much to the longer period provided in Rule 1007(c) but to the newly-adopted Rule 5009(b) providing an official notice from the clerk to the debtors who had failed to file the certificate within 45 days after the first date scheduled for the meeting of creditors. Although most debtors file their certificates within that period (and therefore have no need of the extended period for filing), many others now file shortly after they receive the Rule 5009(b) notice, and a significant number file just after the case is closed, suggesting that the fifteen days following the Rule 5009(b) notice was not quite enough time to complete the course and get the certificate filed.

There is a benefit to the clerk of delaying the Rule 5009(b) notice to the date that is 45 days after the first date set for the § 341 meeting in that no notice need be sent to the majority of debtors who have filed their certificates by that date. But for those debtors who have not filed their certificate in that 45-day period, the timing of the notice is problematic. By the time the notice is received the debtor and debtor’s attorney have undoubtedly turned to other matters; the financial management course and certificate are no longer a priority. The notice sent by the clerk under Rule 5009(b) may not reach the debtor or may be delayed by changes in address or circumstances. Because the debtor does not have CM/ECF access, the notice will be sent by mail, and delays in the postal service are legion. Even if the notice is timely received, it

may be misunderstood or ignored by the debtor. The debtor is unlikely to have any contact with the debtor's attorney so long after the § 341 meeting, and it is much more likely that the certificate will not be filed than if the debtor had received the notice earlier when the debtor and counsel were still in regular contact and it is less likely that life events have intervened.

I also suggest that the notice sent under Rule 5009(b) also be required to include a definite date on which discharge will be withheld if the debtor fails to file the financial management certificate. Although some districts do include such a date, many others simply parrot the language of Rule 1007(c), stating that the certificate is due "within sixty days after the first date set for the meeting of creditors under § 341 of the Code." Debtors are unlikely to know what date was the "first date set for the meeting of creditors" and, even if they do, are unlikely to pull out a calendar and count sixty days from that date, or understand the operation of Fed. R. Bankr. P. 9006(a) on computing time. If they see a specified date, they are more likely to communicate with their lawyer about what they have to do before that date occurs, and therefore are more likely to complete the course.

Therefore, I would amend Rule 5009(b) to read as follows (changes are from the restyled version of the Rule as proposed to be amended to replace the references to "statement" with "certificate"):

(b) Chapter 7 or 13—Notice of a Failure to File a Statement About Completing a Course on Personal Financial Management. This subdivision (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a certificate under Rule 1007(b) and fails to do so before the conclusion of the meeting of creditors under § 341(a). The clerk must promptly notify the debtor that the case will be closed without entering a discharge unless the certificate is filed no later than the date specified in such notice, which date will be sixty days after the first date set for the meeting of creditors.

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