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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ARTHUR J. SPECTOR
UNITED STATES BANKRUPTCY JUDGE

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111 First Street
Bay City, Michigan 48707
(517) 894-8850

226 West Second Street
Flint, Michigan 48502
(810) 235-3220

September 19, 1997

Hon. Adrian G. Duplantier, Chair
Advisory Committee on Bankruptcy Rules
Committee on Rules of Practice & Procedure of
the Judicial Conference of the United States
Washington, D.C. 20544

Re: Proposed amendment to F.R.Bankr.P. 2002, etc.

Dear Judge Duplantier:

I write not to comment upon the amendments to the rules that have been proposed, but instead to suggest other amendments for consideration in the next round of rules amendments. First, I recommend a new amendment to Rule 2002.

Rule 2002(a) requires that the debtor, the trustee, all creditors (and indenture trustees) be served by mail with notice at least 20 days before a list of proposed actions. Rule 2002(h) permits the court to limit the universe of creditors entitled to notice to those who have already filed a proof of claim or who have an extension of time to do so. This provision is very useful in the larger cases, where it saved the clerks lots of money in their postage budgets. These days, however, most courts no longer do their own noticing, but send the paper to be served to the Bankruptcy Noticing Center, which then serves the notice on the parties in interest. The cost of serving notice is now paid for out of the general budget of the Administrative Office of the United States Courts without specific accounting to each district.

In my experience, it is quite common that creditors fail to file proofs of claim even in asset cases. Therefore, notices of proposed sales of estate property; compromises of preference and other litigation; fee applications; final reports of the trustee, which includes requests for compensation, etc. are all served upon creditors who no longer have an interest in the case. Now that there are over 1.2 million cases filed a year, I submit that the current procedure perpetrates a tremendous waste of money. To save this money, I propose an amendment to Rule 2002, which would require notice to all creditors of

only notices of the first meeting of creditors, the bar date for filing claims, and the bar date for filing objections to confirmation of chapter 12 plans. With respect to the other actions under Rule 2002(a), only creditors who have filed claims or who have an extension to do so would be entitled to notice. The revised rule would like something like this:

Rule 2002. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, UNITED STATES, AND UNITED STATES TRUSTEE

(a) Twenty-Day Notices to Parties in Interest. Except as provided in subdivisions (i) and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days notice by mail of:

(1) the meeting of creditors under §341 of the Code;
(2) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and
(3) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

(a') Except as provided in subdivisions (i) and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors and indenture trustees who filed a proof of claim or whose right to file such a proof of claim has not yet tolled (whether because the deadline has not yet passed or because the creditor's right to file such a claim has been extended), at least 20 days notice by mail of:

(1) a proposed use, sale, or lease of property of the estate other than the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;
(2) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;
(3) in a chapter 7 liquidation, a chapter 11 reorganization case, and a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case, unless the hearing is under §707(b) of the Code, or the conversion of the case to another chapter;
(4) the time fixed to accept or reject the proposed modification of a plan; and
(5) hearings on all applications for compensation or reimbursement in excess of $500.

From this change, you can see that creditors who fail to timely file proofs of claim or whose right to file a proof of claim has not been extended, would have no further right to receive notices of administrative proceedings in the case. This makes sense since they no longer have a monetary interest in the results of the case once the deadline for filing proofs of claim has elapsed and they have not participated. I am also sure that many creditors who decide not to participate in the bankruptcy case are perturbed at receiving continual reminders of the case for years after they have written off the debt. This proposal would remove the salt from the wounds while saving the government money. I submit that the committee should consider it in the next round of rules amendments.

On first look, it may seem that requiring the clerk to separate the names of creditors who filed a proof of claim from those that did not -- in essence, making a special service list -- in each asset case will cause confusion and extra work for clerks. But computer technology obviates the need for a clerk to make any decision or action. Presently, when a claim is filed, a clerk makes a computer entry of that fact in Bancap. A simple new command in Bancap to automatically add the creditor's name to a special service list each time a clerk dockets a claim solves this prospective problem. On the day after the claims bar date, the new service list can be electronically sent to the Bankruptcy Noticing Center to replace the original full matrix for purposes of serving all notices which do not require the full mailing list.

On a similar note, I strongly urge the committee to reconsider the various different deadlines in the rules. Many other people have written on the confusing deadline structure in the bankruptcy rules which form a trap for the unwary. The committee should try to standardize one or at most, two deadline periods for use in all procedures. Right now, for example, as we have seen, Rule 2002 provides a general 20-day notice for many things. However, the rule also provides for a 25-day notice for some things and there are other rules which provide for 15 days and 30 days notice for various events. In fact, as I have written to the committee in the past, it is extremely confusing whether the time period for considering plan modifications is really 15 days, 20 days or 25 days. See attached letters dated December 8, 1988 and September 28, 1989. I submit that 15 days is adequate for nearly all purposes and is consistent with the need for expeditious activity in the bankruptcy forum. In those handful of cases where more deliberate consideration is necessary, perhaps a second time limit somewhere around 25 or at most 30 days, might be appropriate. But the plethora of time limits is simply confusing to participants, including lawyers and even judges.

On a final note, many years ago the State of Michigan decided that deadlines in the state judiciary should be fixed in calendar weeks. Therefore, instead of 20 days, the deadline for an activity under Michigan law would be 21 days; instead of 15 days, the deadline would be 14 days. This insures that in most cases the deadline to act falls on a weekday since the triggering act will almost always be a weekday. Such a rule ought to do away with a lot of the confusing case law regarding activities for deadlines which fall on Saturday, Sunday or a holiday. It is also easier to remember such deadlines, especially if you follow my recommendation above.

Please do not hesitate to call or write if you have any questions.

Sincerely,

Arthur J. Spector

Arthur J. Spector
U.S. Bankruptcy Judge

AJS/pey

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ARTHUR J. SPECTOR
UNITED STATES BANKRUPTCY JUDGE

Northern Division at Bay City

311 Federal Building
1000 Washington Avenue
P.O. Box X-911
Bay City, Michigan 48707
(517) 892-8521

Southern Division at Flint

Room 113
Federal Building
600 Church Street
Flint, Michigan 48502
(313) 766-5044

September 28, 1989

Ms. Patricia S. Channon
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Ms. Channon:

You will recall that I addressed this problem with you when we met in St. Paul earlier this month. Here is a copy of the letter I sent to the committee on December 8, 1988. I note that the present draft of the revisions to the Bankruptcy Rules does not deal with this problem. I, therefore, reiterate my concern.

Rule 2002(a) apparently will be amended to provide only 20 days notice to creditors of "the time fixed for filing objections and the hearing to consider confirmation of a Chapter 12 plan." I strongly urge you to add "Chapter 13" to that sentence and to delete it from your revision to Rule 2002(b) in order to remove the confusion I noted in my earlier letter. Adopting my suggestion will have the additional benefit of expediting Chapter 13 practice.

The 25-day period for notice of confirmation hearings might be appropriate in Chapter 11 cases which frequently involve much larger amounts than those at stake in Chapter 13 cases. Chapter 11 plans are far more complex and lengthy. Considering what action to take in a Chapter 11 case requires a creditor to review and understand not only the long and complex plan itself, but also another long and complex document--the disclosure statement. Furthermore, in many Chapter 11 cases, the creditors are spread over a large geographic area, which creates a need for a longer time period within which to permit action to be taken.

Chapter 13 cases, on the other hand, involve far smaller dollar amounts. The plans tend to be short, even "form" in nature, and are usually very simple to understand. Furthermore, in most Chapter 13 cases the creditors are either local or institutional and need no longer than 20 days to respond to a court event. Finally, as you are aware, Chapter 13 practice is meant to be expeditious, even more so than in most other bankruptcy proceedings. This is not only to keep the costs and expenses of the procedure to a minimum, but also to allow the money to flow to the creditor community as quickly as possible. Therefore, I strongly urge adopting a slight change to the

current draft of the revised Bankruptcy Rules to do away with the contradictory and confusing time limits in Chapter 13 cases and also to expedite the administration of Chapter 13 cases which now form a tremendous number of cases in our system. The slight change I suggest is as follows:

Rule 2002(a)(9): "The time fixed for filing objections and the hearing to consider confirmation of a Chapter 12 or Chapter 13 plan".

"Rule 2002(b)(2) The time fixed for filing objections and the hearing to consider confirmation of a Chapter 9 or Chapter 11 plan".

Sincerely,

Arthur J. Spector
Chief Bankruptcy Judge

AJS/pey

Enclosure

cc: Hon. Paul Mannes
Hon. Lloyd George
Prof. Alan N. Resnick
Hon. John K. Pearson

P.S. to Judge Pearson: I hope this letter finds you doing better. We were all distressed to learn of your recent calamity. Get well soon.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ARTHUR J. SPECTOR
UNITED STATES BANKRUPTCY JUDGE

Northern Division at Bay City
311 Federal Building
1000 Washington Avenue
P.O. Box X-911
Bay City, Michigan 48707
(517) 892-8521

Southern Division at Flint
Room 113
Federal Building
600 Church Street
Flint, Michigan 48502
(313) 766-5044

December 8, 1988

Hon. John K. Pearson
U.S. Bankruptcy Judge
403 U.S. Courthouse
401 N. Market Street
Wichita, Kansas 67202

Hon. Lloyd George
U.S. District Judge
300 Las Vegas Blvd., South
Las Vegas, NV 89101

Professor Alan N. Resnick
c/o Hofstra University School of Law
Hempstead, New York 11550

Gentlemen:

I would like to offer the following suggestion as a topic of discussion by the committee working to revise the National Bankruptcy Rules.

A question exists with respect to the appropriate length of time necessary to properly accomplish a modification of a plan. This question arises frequently in Chapter 13 cases.

There are two rules which now exist which appear to be contradictory. Rule 2002(a)(6) requires the clerk or some other person as the Court may direct to give all parties in interest not less than 20 days notice by mail of "(6) the time fixed to accept or reject a proposed modification of a plan . . . ." Immediately thereafter, Rule 2002(b) states that the clerk or some other person as the Court may direct shall give all parties 25 days notice by mail of (2) the time fixed for filing objections and the hearing to consider confirmation of a plan.

Assume a Chapter 13 case wherein the plan has already been confirmed but the debtor or some other appropriate party in interest wishes to modify it. Must the parties wait 20 days pursuant to Rule 2002(a)(6) or 25 days pursuant to Rule 2002(b) before an order may be submitted confirming the modified plan?

One might say that Rule 2002(a)(6) does not apply to a Chapter 13 case since it refers to time to "accept or reject a proposed modification of a plan" and, as we know, except in very limited circumstances, there is no real vote in Chapter 13 case. The exception, of course, is that a secured creditor may "reject" a plan, in which case the secured claim may be crammed down pursuant to §1325(a)(5). However, when I recently consulted several of the draftsmen of the current rules, they informed me that it was their intention and the intention of the committee that Rule 2002(a)(6) apply to all chapters of the Code. Of course in Chapter 13 cases, the real issue is whether a party objects to confirmation. Since Rule 2002(b)(2) fixes 25 days for the time within which to do that, it would seem that 2002(a)(6) is superfluous in the context of Chapter 13.

This particular anomaly highlights one of, what I believe are, many procedural deficiencies relative to Chapter 13 practice. I would sincerely hope that the committee would discuss this and other procedures regarding Chapter 13. I believe a greater emphasis on the procedures of Chapter 13 would greatly benefit all practitioners in that field greatly. Obviously, my comments with regard to Chapter 13 go with equal if not stronger force with respect to Chapter 12, which, as you know, is presently without any rules to assist its implementation.

Sincerely,

Arthur J. Spector

Arthur J. Spector
U.S. Bankruptcy Judge

AJS/pey

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

November 24, 1997

Honorable Arthur J. Spector
United States Bankruptcy Court
111 First Street
Bay City, Michigan 48707

Dear Judge Spector:

Thank you for your suggestion to amend Bankruptcy Rule 2002. A copy of your letter will be sent to the chair and reporter of the Advisory Committee on Bankruptcy Rules for their consideration.

We welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,

Peter G. McCabe
Secretary

cc: Honorable Alicemarie H. Stotler
Honorable Adrian G. Duplantier
Professor Alan N. Resnick
Professor Daniel R. Coquillette