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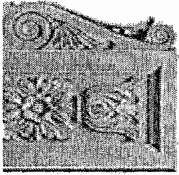

Susan Thurston/RIB/01/USCOURTS

01/08/2007 01:03 PM

To Rules_Comments@ao.uscourts.gov
cc
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Subject Comment to proposed amendment to Bankruptcy Rule 1019

Please accept the below comment in connection with the proposed amendment to Bankruptcy Rule 1019:

I am bringing to the Committee's attention an issue that is fast gaining momentum in the courts that seems to either have been overlooked or not able to have been addressed concerning the new Form 22 and its 3 separate versions for different case chapters (A,B and C) on conversion of cases. It has been this office's understanding since October 2005 based on a variety of sources such as court administration guidance, 707(b) language and Rule 1007, that on conversion, a new appropriate Form 22 would need to be filed by the debtor for the new chapter case, particularly in a chapter 7 case to compute the means test. However, Rule 1019(1) is silent on this issue, resulting in an ambiguity or inconsistency among the various bankruptcy districts as to whether to require a new Form 22. Additionally, the silence in the rules is also resulting in legal challenges being made by debtors, who in some instances are filing under chapter 13 and then shortly thereafter converting to chapter 7 without ever being subject to the means test by filing a Form 22A.

I would suggest that the reference in the proposed amendment to Rule 1019(2) to a new filing period for 707(b) and (c) motions in a case converted to chapter 7 argues for requiring in Rule 1019(1) that Form 22A be filed in cases converted to chapter 7. In addition, for consistency, a similar argument could be made that on conversion to chapters 11 or 13, a new Form 22 should be filed applicable to the newly converted chapter to determine disposal income for plan confirmation purposes.

If the rules committee determines that some provision should be added to either Fed Rule 1019 or 1007 to help clarify the issue, a related aspect is what time period to use for providing the financial information since a case could be converted many years after filing. One suggestion would be to use the six months prior to conversion for the income period. Alternatively, the committee might consider adopting a provision similar to the local rule adopted by Washington Western concerning schedules in converted cases:

Rule 1007-1(b) Schedules Required in Converted Cases. Where a chapter 7, chapter 13, chapter 12, or individual chapter 11 case is converted to another chapter, the debtor shall be required to file amended schedules, statements, and documents required by Rule 1007(b)(1), (4), (5), and (6), Interim Fed.R.Bankr.P., or a declaration under penalty of perjury that there has been no change in the schedules, statements, and documents; provided, however, that a statement of current monthly income (means testing form) shall not be required if the time for filing a motion under § 707(b) or (c), or any extension thereof, expired during the time the case was previously pending under chapter 7.

Any assistance the committee can give in resolving this ambiguity would be greatly appreciated. Thank you for the opportunity to comment,

Susan Thurston

Susan Thurston, Clerk of Court