United States Bankruptcy Court
WESTERN DISTRICT OF MICHIGAN

CHAMBERS OF
SCOTT W. DALES
BANKRUPTCY JUDGE

ONE DIVISION AVENUE NORTH
GRAND RAPIDS, MICHIGAN 49503

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12-BK-M

October 23, 2012

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Re: Proposed Amendment to Fed. R. Bankr. P. 2002(h)

Ladies and Gentlemen:

Over the last nine months or so, the bar of lawyers in the Western District of Michigan who represent chapter 13 debtors have made a concerted effort to mitigate the costs of giving notice to creditors who have not filed proofs of claim. For practical reasons I have been receptive to their arguments, but have felt constrained by the Bankruptcy Rules as presently drafted to require notice that in many instances increases expense without increasing participation or improving decisions on the merits. I am writing to suggest what I regard as a "simple fix."

Many creditors, especially those who have written-off debts or whose claims are small, do not bother to file proofs of claim in chapter 13 cases. A creditor who does not file a claim cannot have an allowed claim,[1] and therefore cannot participate in distributions made by a trustee.[2] In contrast to chapter 7, where a trustee may pay an untimely claim after all timely claims are satisfied, an untimely chapter 13 claim usually meets with an objection. *Compare* 11 U.S.C. § 726(a)(3) *with id.* § 502(b)(9). It is common in a chapter 13 case, therefore, to have more "creditors" (as that term is defined in 11 U.S.C. § 101(10)) than holders of "allowed" claims.

Because Fed. R. Bankr. P. 2002(a) generally requires notice to "all creditors," the rule frequently requires the court or counsel to give notice to entities who will not be affected by the proceedings because they have elected not to participate. The drafters of the Bankruptcy Rules

[1] 11 U.S.C. § 502(a) (a claim, "proof of which is filed under section 501 of this title, is deemed allowed" absent objection).

[2] *See* Fed. R. Bankr. P. 3021 ("distribution shall be made to creditors whose claims have been allowed . . .").

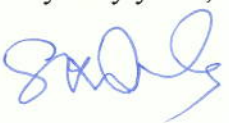
have addressed this problem —at least in liquidation cases under chapter 7— by permitting the court to direct that all notices be mailed "only to the debtor, the trustee, all indenture trustees, *creditors that hold claims for which proofs of claim have been filed*, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2)." Fed. R. Bankr. P. 2002(h) (emphasis added). The advisory committee note explains, using language equally applicable across all chapters, that "[t]he elimination of notice to creditors who have no recognized stake in the estate may permit economies in time and expense." For some reason, however, this eminently practical provision applies only in the relatively short-lived liquidation proceedings under chapter 7, but not in the lengthier chapter 13 proceedings, which may span from three to five years, depending on the debtor's plan. During this time, debtors or their attorneys may have numerous occasions to seek relief from the court, for example by seeking to modify confirmed plans or persuade the court to approve attorney fee petitions. Without a safety valve such as Bankruptcy Rule 2002(h) provides in chapter 7 cases, chapter 13 debtors and their estates will continue to incur substantial expense in giving notice to entities who do not care or, for that matter, who may not have standing to object.

The fix I propose is simple: amend the first sentence of Fed. R. Bankr. P. 2002(h) by striking, "In a chapter 7 case," and inserting, "In a case under chapter 7 or chapter 13," in its stead. Indeed, given the advisory committee note mentioned above, the Committee might consider extending this discretion across all chapters by simply striking the first clause.

This modest amendment would give the bankruptcy courts the discretion to determine the propriety of notice under the particular circumstances, discretion that Congress has explicitly bestowed in the Bankruptcy Code's first rule of construction. *See* 11 U.S.C. § 102(1); *see also* Fed. R. Bankr. P. 2002(m) & 9007. This suggestion is also consistent with the spirit of Bankruptcy Rule 1001 and the principle that our courts must construe the rules with the aim of securing "the just, speedy, and inexpensive determination of every case and proceeding." Fed. R. Bankr. P. 1001. I submit that we should draft the rules with this same purpose in mind.

If you wish to discuss my proposal, please do not hesitate to call or write. Thank you, in advance, for your consideration.

Very truly yours,



Scott W. Dales

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