

Changes to Federal Rules of Bankruptcy Procedure Effective December 1, 1999

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In April 1999, the United States Supreme Court ordered several amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 1999. While the majority of the amendments only clarified existing language in the Rules, there were several amendments that made substantive changes worth noting.

Notice on Motion to Dismiss for Debtor's Failure to File Documents

Rule 1017 was amended to include new subdivision (c). This subdivision provides that the United States trustee, the only entity with standing to file a motion to dismiss under Sections 707(a)(3) or 1307(c)(9), is only required to serve the motion on the debtor, the trustee, and any other entity which the court may direct. Prior to the amendment, the United States trustee was required to serve the motion on the debtor, panel trustee, and all creditors under Rule 2002(a). The amendment eliminates the cost of sending notice to all the creditors in a Chapter 7 and 13 cases.

Preconversion Administrative Expense

An amendment to Rule 1019 requires the holder of a postpetition administrative expense claim incurred prior to conversion of a case to file a request for payment under Section 503(a). The request is deemed to be timely filed if it is filed either before conversion or within a time period specified by the court. If the request is made by a governmental unit, the request may be filed up to 180 days following conversion or within a time specified by the court.

Ten Day Stay

Probably the most significant change to the Rules is the addition of a new, automatic ten day stay of the effect of any: (1) confirmation orders in Chapter 9 or Chapter 11 (Rules 3020 and 3021); (2) stay relief orders (Rule 4001(a)(3)); (3) orders authorizing the use, sale, or lease of property other than cash collateral; and (4) orders authorizing assignment of executory contracts or unexpired leases under Section 365(f). The purpose of the amendments is to provide a party with an opportunity to obtain a stay pending appeal before the plan is implemented or the order is enforced making the appeal moot. The amendments do not affect the time period under Rule 8002 to file a notice of appeal. While the new ten day stay is effective automatically upon entry of the order, each amended rule gives the court discretion to order otherwise. This may include fashioning a stay either shorter or longer than ten days.