Bankruptcy Judges Panel:

Rules, Reminders, and Requests

Friday, June 2, 2017

The Honorable Rebecca B. Connelly

Chief Judge, U.S. Bankruptcy Court for the Western District of Virginia

The Honorable Paul M. Black

Judge, U.S. Bankruptcy Court for the Western District of Virginia

Elizabeth Blackwell Carroll

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Materials Outline:

I. Credit Counseling: Time Requirements and Exigent Circumstances

Section 109(h)(1): "180-day period ending on the date of filing of the petition"

11 U.S.C. § 109(h)(1): "Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis."

11 U.S.C. § 521(b)(1): "In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court— (1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; . . . ."

***In re Stinnie*, 555 B.R. 530 (Bankr. W.D. Va. 2016) (Connelly, J.):** Individual filed bankruptcy petition certifying she had taken a prepetition credit counseling course within the 180-day period ending on the date of the petition as required by section 109(h). She subsequently filed a certificate of credit counseling showing that she took the course a day after filing her petition. The debtor did not assert any exception to this requirement. The Court found the individual did not meet the eligibility requirements and dismissed the case without prejudice.

***In re Williams*, No. 13-51463, 2014 WL 457735 (Bankr. W.D. Va. Feb. 4, 2014) (Connelly, J.):** The debtor began, but did not finish, the credit counseling briefing required by 11 U.S.C. § 109(h)(1) before filing her chapter 7 bankruptcy; she did not receive a certificate of completion until eight days after filing her petition. Because the debtor did not complete the briefing before filing the petition as required by the statute, the court dismissed the case.

Section 109(h)(3): Exigent Circumstances

11 U.S.C. § 109(h)(3): "(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 7-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days."

***In re Denson*, No. 13-61602, 2013 WL 5525106 (Bankr. W.D. Va. Oct. 3, 2013) (Stone, J.):** Female debtor moved to extend the time to complete the credit counseling course. The court concluded that she met the requirement by complying with section 109(h)(3), because she filed a certificate that was satisfactory to the court that (a) described exigent circumstances that merited a waiver of the requirement of section 109(h)(1), and (b) stated that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain such counseling during the 7-day period beginning on the date on which the debtor made that request.

***In re Grayson*, Case No. 12-71908 (Bankr. W.D. Va. Jan. 25, 2013) (Stone, J.):** The debtors requested a temporary waiver of the requirements to obtain credit counseling based on exigent circumstances as the male debtor was seriously ill and the female debtor was required to render constant care to her husband. Because the debtors failed to establish either that they obtained approved credit counseling education before filing their petition or made a request to an approved agency for such a course which was not available to them within seven days of making such request, as is explicitly required by § 109(h), they were not eligible to be debtors in the case.

***In re Holsinger*, 465 B.R. 775 (Bankr. W.D. Va. 2012) (Krumm, J.):** Debtor had signed up for credit counseling prepetition, but due to work and lack of access to a computer, she was unable to complete the course prepetition. The debtor alleged exigent circumstances because her house was being foreclosed upon. The bankruptcy court found that a foreclosure is an exigent circumstance. The bankruptcy court, however, also found that there was no evidence that the credit counseling service could not provide the required course prepetition. The fact that the debtor could not complete the course did not excuse her from meeting all requirements under section 109(h)(3).

***In re Mitrano*, 409 B.R. 812 (E.D. Va. 2009) (Trenga, J.):** Debtor appealed the bankruptcy court's dismissal of his case. The debtor had requested from the bankruptcy court a waiver or deferment of the credit counseling requirement. The debtor had struck through the portion of his petition that certified that he had requested but did not receive the counseling. Based on the fact that the debtor had not requested the services, the bankruptcy court concluded that he did not fall within the exigent circumstances exception to the credit counseling requirement. The bankruptcy court thus *sua sponte* dismissed the case. The district court affirmed the bankruptcy court's dismissal, holding that the statutory requirements should be applied as written and are mandatory.

***In re Murray*, No. 08-11101, 2008 WL 732730 (Bankr. E.D. Va. Mar. 17, 2008) (Mitchell, J.):** Debtor filed a petition to halt foreclosure. He was unaware of the credit counseling requirement and thus had neither taken nor requested the credit counseling course pre-petition. Reviewing the requirements of section 109(h), the district court held that the bankruptcy court had no choice but to dismiss the case since it could not grant a temporary waiver under the facts of the situation.

***In re Tillman*, No. 17-30037, 2017 WL 933025 (Bankr. W.D.N.C. Mar. 8, 2017) (Beyer, J.):** In 2010, Congress amended § 109(h) to instead require debtors to complete their credit counseling classes "during the 180–day period *ending on* the date of filing of the petition." § 109(h) (emphasis added). The plain language of the current version of § 109(h) unambiguously allows a debtor to satisfy the credit counseling requirement on the same day that his case commences, even if the debtor does not take a class until after he files his petition. The court must presume that words in a statute have their normal meanings unless Congress provided definitions in the statute. Since "date of filing" in § 109(h) refers to an entire day and not to a particular point in time during the day, debtors that obtain credit counseling at any point during the same day that they file their petitions are in compliance with the plain language of the statute. If the statutory language is unambiguous and not absurd, the court should enforce the statute and should not undertake any further inquiry.

II. Venue Requirements

Venue of Title 11 Cases: 28 U.S.C. § 1408

Except as provided in section 1410 [dealing with chapter 15 cases], a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

***In re Berger*, No. 12-72670-FJS, 2013 WL 2949578 (Bankr. E.D. Va. May 31, 2013) (Santoro, J.):** The bankruptcy court was faced with a motion to dismiss or transfer the case. It was uncontroverted that the debtor did not reside, have assets, or have as his principal place of business the Eastern District of Virginia. The court thus focused on the meaning of the debtor's domicile. In Virginia, to establish a domicile, the party must have a physical presence in the state

and an intention to remain in the state for an unlimited time. The court focused on the time the debtor filed his petition and made findings that the debtor's intention at the time of filing was to remain in the Commonwealth although at the time he was physically residing in North Dakota. The court thus denied the motion to dismiss or transfer.

***In re Gutierrez*, 528 B.R. 1 (Bankr. D. Vt. 2014):** Debtor filed his petition in Vermont. The objecting creditor and the debtor disputed whether the debtor's residence was in Vermont or Utah. However, the Court concluded that it was undisputed that the debtor's principal assets were located in Vermont during the 180-day period preceding the petition. Accordingly, the bankruptcy court did not need to determine where the primary residence was located. The court held that the venue in Vermont was proper based on the location of the debtor's assets.

***Montana v. Blixseth (In re Blixseth)*, 484 B.R. 360 (B.A.P. 9th Cir. 2012):** The Montana Department of Revenue filed an involuntary petition against an individual debtor in Nevada. The Department asserted that the principal assets of the debtor and thus the venue for the case should be Nevada. The bankruptcy court dismissed the case for improper venue, noting that the principal assets in question were intangible membership interests which had no situs. The Department appealed. The Bankruptcy Appellate Panel for the Ninth Circuit reversed, holding that the membership interests in the Nevada company should be deemed located in Nevada because "the Ninth Circuit has instructed that, in determining where a debtor's assets are located for venue purposes, common sense, context, justice and convenience must guide a trial court."

***In re Gurley*, 215 B.R. 703 (Bankr. W.D. Tenn. 1997):** The court considered a motion to transfer venue of debtor's bankruptcy case to another district, in which the debtor's husband had a bankruptcy case pending. The bankruptcy court ultimately determined that venue was proper because the debtor clearly maintained a residence in Memphis, Tennessee. The debtor had resided there the greater part of the 180-day period preceding the filing of her petition. The debtor also had her principal place of business in Shelby County, Tennessee. In denying the motion to transfer venue, the bankruptcy court emphasized that any one of the venue requirements was sufficient to establish proper venue.

Transfer of Venue: 28 U.S.C. § 1412

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

***In re Land Stewards, L.C.*, 293 B.R. 364 (Bankr. E.D. Va. 2002) (Tice, J.):** The bankruptcy court considered a motion to transfer venue. The bankruptcy court held that the burden on such a motion is on the movant and the standard is a preponderance of the evidence. The bankruptcy court further held that when considering whether to transfer venue, a court should

consider: (a) the proximity of creditors of every kind to the court; (b) the proximity of the debtor to the court; (c) the proximity of the witnesses necessary to the administration of the estate; (d) the location of the assets; (e) the economic administration of the estate; and (f) the necessity for ancillary administration if bankruptcy (liquidation) should result.

***Thompson v. Greenwood*, 507 F.3d 416 (6th Cir. 2007):** The United States Trustee filed a motion to dismiss or transfer venue in bankruptcy cases filed in Tennessee by Mississippi residents. One improperly venued case was retained by the bankruptcy court, which found that it was in the interest of justice and convenience of parties to keep the case under 28 U.S.C. § 1412. One case was transferred based on improper venue. The Court of Appeals for the Sixth Circuit held that the 28 U.S.C. § 1412 analysis did not apply to improperly venued cases and further that bankruptcy courts lack authority to retain such cases over objections of interested parties.

Fed. R. Bankr. P. 1014(a)(2)

If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

III. Debtor's Right to Convert Case from Chapter 13 to Chapter 7 – Bad Faith Issues

11 U.S.C. § 1307: "(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable . . . .

(g) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter."

11 U.S.C. § 348(f)(1): "Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter of this title –

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in possession of or is under the control of the debtor on the date of conversion: . . ."

11 U.S.C. § 348(f)(2): "If the debtor converts a case under chapter 13 of this title to a case under another chapter of this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion."

Federal Rule of Bankruptcy Procedure 1017(f)(3): "A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule 1019. The clerk shall promptly transmit a copy of the notice to the United States trustee."

Federal Rule of Bankruptcy Procedure 1017(f)(1): "Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b)."

Federal Rule of Bankruptcy Procedure 9014(a): "In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise."

***Harris v. Viegelahn*, 135 S.Ct. 1829, 1835–36 (2015):** "Congress accorded debtors a nonwaivable right to convert a Chapter 13 case to one under Chapter 7 'at any time.' § 1307(a). To effectuate a conversion, a debtor need only file a notice with the bankruptcy court. Fed. Rule Bkrtcy. Proc. 1017(f)(3). No motion or court order is needed to render the conversion effective."

The Court held that post-petition wages held by a Chapter 13 trustee at the time the case is converted to Chapter 7 must be returned to the debtor and not distributed to creditors.

***In re Mullican*, 417 B.R. 408 (E.D. Tex. 2009):** The debtors filed a Chapter 13 case, which was later converted to Chapter 7 upon notice by the debtors (after the debtors received an inheritance consisting of an IRA worth $162,000 and the male debtor lost his job). During the pendency of the Chapter 13 case, the debtors withdrew money from the IRA and purchased new furniture, jewelry and computers. They also used some of this money for a vacation and paid off some credit card debt. At the time of the conversion, the debtors listed the IRA as exempt property and stated that the IRA was not property of the Chapter 7 bankruptcy estate. After the Chapter 7 Trustee filed an objection to the debtors' exemptions regarding the IRA, the debtor withdrew additional funds of $20,000 from the IRA. In response, the Trustee filed an adversary proceeding objecting to the claim that the IRA was exempt property, contended the IRA was property of the estate as of the petition date and that any withdrawal of funds from the IRA constituted an avoidable post-petition transfer of property. The Trustee also sought judgment against the debtors for the amount of funds withdrawn from the IRA and to deny discharge to the debtors.

The Bankruptcy Court found that the IRA was not property of the estate as of the petition date, but because they converted their case in bad faith, the IRA became property of the estate on the conversion date. The Court found that the withdrawal from the IRA after the conversion date was an avoidable transfer that may be recovered by the Trustee and ordered the debtor to repay the

money withdrawn from the IRA after the Trustee filed his objection. The Court denied discharge of their debt and ordered the debtors to turn over the IRA to the Trustee for distribution to creditors. The debtors appealed the decision and the Trustee filed a cross appeal. The District Court affirmed the decision of the Bankruptcy Court.

In reviewing the issue of bad faith and what evidence may be considered under Section 348(f), the Court noted as follows: "The Court finds the definition of bad faith as defined . . . in *In re Bajarano* to be both persuasive and consistent with the ordinary meaning of bad faith. *See Bejarano*, 302 B.R. at 562; BLACK'S LAW DICTIONARY 149 (8th ed. 2004) (defining bad faith as '[d]ishonesty of belief or purpose'). In *In re Bajarano*, the court defined 'bad faith' under § 348(f) as 'not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; . . . it contemplates a state of mind affirmatively operating with furtive design or ill will.' . . . The *Bejarano* court also indicated that courts should consider all relevant facts when determining whether a debtor's conversion was in bad faith. . . . The Court agrees. When deciding whether a debtor converted a case with bad faith intent, the bankruptcy court may consider all facts that are relevant to the debtor's intent at the time of conversion, regardless of whether the fact occurred pre-conversion or post-conversion." *Id.* at 414.

The Bankruptcy Court found that the evidence in the record indicated that the debtors were deliberately trying to avoid paying unsecured creditors, had the ability to continue making plan payments even without the male debtor's income from his job, noting that the inherited IRA was worth almost 3 years of his salary at the time he lost his job, and that the debtors could have easily paid off their chapter 13 plan in full with the proceeds from the IRA. The Court also noted that the debtors repeatedly failed to disclose all of their post-petition assets and made false representations regarding the magnitude of his inheritance.

IV. Court Orders

Local Rule 9072-1(A): "Time for Filing: When the Court instructs a party to prepare a proposed order, the same shall be filed with the Court within ten (10) days after the conclusion of the trial, hearing, or other disposition of the matter at issue. "

Local Rule 9072-1(C): "Endorsement: Endorsement of the order by all parties to the action is encouraged but not required. Difficulty in obtaining endorsements will not excuse the party required to file a proposed order from doing so within the time prescribed by A."

If a response or answer has been filed, an order disposing of the matter is expected to be endorsed by all parties that have filed a response or answer.

Submitting an order to the Court does NOT remove the matter from the hearing docket. If the order is *entered* prior to the hearing, the hearing will be removed from the docket.

The chapter 13 trustee's endorsement is typically required for orders in chapter 13 cases.

Please proofread your orders.

The Western District does not have the same Local Rules as the Eastern District.

If the Court order provides for actions to be completed, the order should specify the particular actions (i.e., "Mr. John Doe shall provide a copy of his 2016 federal income tax return to the chapter 13 trustee's office by May 1, 2017," *not* simply "debtor to comply with Trustee's Report.") In some cases, clients may not understand who needs to do what (some debtors do not realize they are the "debtors"), and in most cases, the Court will be unable to enforce an order when it is ambiguous.

V. Motions to Seal/Motions to Restrict Access

Documents filed with the bankruptcy court are open, public records, unless such documents fall within the exceptions provided for in Bankruptcy Code section 107(b) or (c). 11 U.S.C. § 107(a). These subsections grant the Court the authority to protect an entity's trade secret or confidential research, development, or commercial information; a person from scandalous or defamatory matters; or an individual's personal information that could lead to identity theft. 11 U.S.C. § 107(b), (c). Cause to seal must be shown.

"[C]ourts have recognized a strong presumption of public access to court records." *In re Orion Pictures Corp.*, 21 F.3d 24, 26 (2d Cir. 1994) (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597–98 (1978)).

"Only the most compelling reasons justify sealing court records." *Togut v. Deutsche Bank AG, Cayman Islands Branch (In re Anthracite Capital, Inc.)*, 492 B.R. 162, 174 (Bankr. S.D.N.Y. 2016). To overcome the longstanding principle that court records should be publicly accessible, the debtor must "show extraordinary circumstances and a compelling need for protection." *Id*; *see also In re Food Mgmt. Grp., LLC*, 359 B.R. 543 (Bankr. S.D.N.Y. 2007) ("[M]ere embarrassment or harm caused to the party is insufficient to grant protection under § 107(b)(2).") (citation omitted) (collecting cases); *In re Khan*, No. BAP CC-13-1297-DPATA, 2013 WL 6645436, at *4 (B.A.P. 9th Cir. Dec. 17, 2013) (per curiam) (unpublished decision) (noting potential negative employment prospects do not warrant sealing); *Father M. v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417, 432 (9th Cir. 2011) (concluding

statements are scandalous if "offensive to a sense of decency," "grossly disgraceful" or "shameful").

Fed. R. Bankr. P. 9037. Privacy Protection For Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) Exemptions From the Redaction Requirement. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding unless filed with a proof of claim;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by subdivision (c) of this rule; and

(6) a filing that is subject to §110 of the Code.

VI. Rule 3002.1: Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

3002.1(c) and (e): Notice and Determination of Fees, Expenses, and Charges

Text of Fed. R. Bankr. P. 3002.1(c), (e):

"(c) Notice of Fees, Expenses, and Charges. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

* * * *

(e) Determination of Fees, Expenses, or Charges. On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code."

Procedure for Determination:

Rule 3002.1(e) is clear that the request for a determination of fees, expenses, and charges must be made by motion within one year after the filing of the notice. Fed. R. Bankr. P. 3002.1(e). Further, the Rule explicitly limits the determination to "whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code." The motion is to be made pursuant to Rule 9014. Accordingly, the motion must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b). The timing of service of the motion and any response is governed by Rule 9006(d).

The request for determination may also be brought as an adversary proceeding. ***See Trevino v. HSBC Mortg. Servs. (In re Trevino)*, 533 B.R. 176 (Bankr. S.D. Tex. 2015).**

3002.1(f), (g), and (h): Notice, Response, and Determination of Final Cure Payment

Fed. R. Bankr. P. 3002.1(c), (e):

(f) Notice of Final Cure Payment. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) Response to Notice of Final Cure Payment. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

(h) Determination of Final Cure and Payment. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

Procedure for Determination:

Rule 3002.1(h) is clear that the request for a determination of final cure and payment must be made by motion within 21 days after the statement of the creditor is filed pursuant to Rule 3002.1(g). Fed. R. Bankr. P. 3002.1(h). Either the debtor or the trustee may file the motion. The motion is to be made pursuant to Rule 9014. Accordingly, the motion must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b). The timing of service of the motion and any response is governed by Rule 9006(d).

Some courts, however, have held that failure to file a motion for determination within the 21-day window is not a waiver of the debtor's ability to challenge the alleged arrearages. ***See Bodrick v. Chase Home Fin., Inc. (In re Bodrick)*, 498 B.R. 793 (Bankr. N.D. Ohio 2013)** (concluding that the failure to file a motion was not a determination by the bankruptcy court and thus a challenge was not barred by res judicata or issue preclusion).

VII. Select Pending Amendment to the Federal Rules of Civil Procedure Which Will (Most Likely) Become Effective December 1, 2017

N.B.: Strike-through text represents deletions and underlined text represents new additions.

Fed. R. Civ. P. 4.

* * * * *

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court on motion or on its own after notice to the plaintiff must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

* * * * *

This is a technical amendment that integrates the intended effect of the amendments in 2015 and 2016.

VIII. Select Pending Amendments to the Federal Rules of Bankruptcy Procedure Which Will (Most Likely) Become Effective December 1, 2017

N.B.: Strike-through text represents deletions and underlined text represents new additions.

*****Please see chapter 13 form plan materials for amendments related to chapter 13 practice*****

Fed. R. Bankr. P. 1001

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Fed. R. Bankr. P. 1006(b)

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) Application to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

Fed. R. Bankr. P. 1015(b)

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) ~~a husband and wife~~spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of ~~a husband and wife~~spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

IX. Select Pending Amendments to the Federal Rules of Evidence Which Will (Most Likely) Become Effective December 1, 2017

Fed. R. Evid. 803

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

* * * * *

(16) ***Statements in Ancient Documents.*** A statement in a document ~~that is at least 20 years old~~that was prepared before January 1, 1998, and whose authenticity is established.

* * * * *

Fed. R. Evid. 902

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

* * * * *

(13) ***Certified Records Generated by an Electronic Process or System.*** A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

(14) ***Certified Data Copied from an Electronic Device, Storage Medium, or File.*** Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).