

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re

GENERAL ORDER 06-06

GENERAL ORDER ADOPTING AMENDED INTERIM BANKRUPTCY RULE 1007

Whereas, on April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) was enacted into law; and

Whereas, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States approved Interim Rules designed to implement the substantive and procedural changes mandated by the Act and said Interim Rules were adopted by this Court by General Order entered October 17, 2005; and

Whereas, the Advisory Committee on Bankruptcy Rules has prepared an Amendment to Interim Bankruptcy Rule 1007; and

Whereas, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has approved said Amendment and recommends the adoption of the Amendment to provide uniform national procedures for implementing the Act;

NOW THEREFORE, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the attached Amendment to Interim Rule 1007 is adopted in its entirety without change by this Court to be effective October 1, 2006. For cases and proceedings filed prior to October 17, 2005, not governed by the Act, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court in effect on October 16, 2005, other than the Interim Rules, shall apply. The Interim Rules, as amended, shall remain in effect until further order of the Court or as they may be altered by the Judicial Conference.

ENTERED: **SEP 28 2006**



RONALD G. PEARSON, JUDGE

4. Text of Amendment to Proposed Interim Rule 1007.

Interim Rule 1007. Lists, Schedules, and Statements, and Other Documents; Time Limits¹

1 * * * * *

2 (b) SCHEDULES, STATEMENTS, AND OTHER

3 DOCUMENTS REQUIRED.

4 * * * * *

5 (3) Unless the United States trustee has determined

6 that the credit counseling requirement of § 109(h) does not

7 apply in the district, an individual debtor must file the

8 ~~certificate and debt repayment plan, if any, required by~~

9 ~~§ 521(b), a certification under § 109(h)(3), or a request for a~~

10 ~~determination by the court under § 109(h)(4). a statement of~~

11 ~~compliance with the credit counseling requirement, prepared~~

¹ The amendments are proposed to Interim Rule 1007. Therefore, the underlined additions and the strikeout deletions are to the Interim Rule adopted by the courts on or about October 17, 2005, and not to the existing national rule. This amendment is intended to operate along with the adoption of the amendments to Official Form 1, the voluntary petition.

12 as prescribed by the appropriate Official Form which must
13 include one of the following:

14 (A) an attached certificate and debt repayment
15 plan, if any, required by § 521(b);

16 (B) a statement that the debtor has received the
17 credit counseling briefing required by § 109(h)(1) but does
18 not have the certificate required by § 521(b);

19 (C) a certification under § 109(h)(3); or

20 (D) a request for a determination by the court
21 under § 109(h)(4).

22 * * * * *

23 (c) TIME LIMITS. In a voluntary case, the schedules,
24 and statements, and other documents required by subdivision
25 (b)(1), (4), (5), and (6) shall be filed with the petition or
26 within 15 days thereafter, except as otherwise provided in
27 subdivisions (d), (e), (f), and (h) of this rule. In an
28 involuntary case, the list in subdivision (a)(2), and the
29 schedules, statements, and other documents required by

30 subdivision (b)(1) shall be filed by the debtor within 15 days
31 of the entry of the order for relief. ~~The documents required by~~
32 ~~subdivision (b)(3) shall be filed with the petition in a~~
33 ~~voluntary case. The statement required by subdivision (b)(7)~~
34 ~~shall be filed by the debtor within 45 days after the first date~~
35 ~~set for the meeting of creditors under § 341 of the Code in a~~
36 ~~chapter 7 case, and no later than the last payment made by the~~
37 ~~debtor as required by the plan or the filing of a motion for~~
38 ~~entry of a discharge under § 1328(b) in a chapter 13 case.~~
39 ~~The statement required by subdivision (b)(8) shall be filed by~~
40 ~~the debtor not earlier than the date of the last payment made~~
41 ~~under the plan or the date of the filing of a motion for entry of~~
42 ~~a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b). In~~
43 ~~a voluntary case, the documents required by paragraphs (A),~~
44 ~~(C), and (D) of subdivision (b)(3) shall be filed with the~~
45 ~~petition. Unless the court orders otherwise, if the debtor has~~
46 ~~filed a statement under subdivision (b)(3)(B), the documents~~
47 ~~required by subdivision (b)(3)(A) shall be filed within 15 days~~

48 of the order for relief. In a chapter 7 case, the debtor shall file
49 the statement required by subdivision (b)(7) within 45 days
50 after the first date set for the meeting of creditors under § 341
51 of the Code, and in a chapter 13 case no later than the date
52 when the last payment was made by the debtor as required by
53 the plan or the filing of a motion for a discharge under
54 § 1328(b). The debtor shall file the statement required by
55 subdivision (b)(8) no earlier than the date of the last payment
56 made under the plan or the date of the filing of a motion for
57 a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of
58 the Code. Lists, schedules, statements, and other documents
59 filed prior to the conversion of a case to another chapter shall
60 be deemed filed in the converted case unless the court directs
61 otherwise. Except as provided in § 1116(3), any extension of
62 time for the filing of the schedules, statements, and other
63 documents required under this rule may be granted only on
64 motion for cause shown and on notice to the United States
65 trustee, ~~and to~~ any committee elected under § 705 or

66 appointed under § 1102 of the Code, trustee, examiner, or
67 other party as the court may direct. Notice of an extension
68 shall be given to the United States trustee and to any
69 committee, trustee, or other party as the court may direct.

COMMITTEE NOTE

Subdivision (b)(3) of the rule is amended to require the debtor to file an Official Form relating to the credit counseling requirement provided by the 2005 amendments to § 109. Official Form 1 includes statements that warn the debtor of the consequences of failing to comply with the credit counseling requirement. The rule also provides that the debtor may file a statement that the debtor has received credit counseling but has not yet received a certificate from the credit counseling provider. Subdivision (c) is amended to permit the debtor to file the certificate and debt repayment plan within 15 days after the filing of the petition if a Rule 1007(b)(3)(B) statement is filed.

Other changes are stylistic.

* * * * *