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DEC 18 2008

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

United States Bankruptcy Court
Columbia, South Carolina (39)

IN RE:

LOCAL RULE 1007-I

OPERATING ORDER

08-06

As a result of the enactment of the National Guard and Reservists Debt Relief Act of 2008 and the resulting amendment to the United States Bankruptcy Code, and upon agreement of the Judges of this Court, Local Rule 1007-I (attached hereto), adopting Interim Bankruptcy Rule 1007-I and additions thereto, is adopted as a Local Rule of this Court effective in all cases filed on or after December 19, 2008.



John E. Waites, Chief Judge

Columbia, South Carolina
December 18, 2008

LOCAL RULE 1007-I: INCORPORATION OF INTERIM BANKRUPTCY RULE 1007-I

Interim Bankruptcy Rule 1007-I, as amended, is applicable to all cases filed on or after December 19, 2008 and is to be read in conjunction with any corresponding Federal Rule.

Notes:

(2008) This rule was added to the Local Rules December 19, 2008 and serves to implement the National Guard and Reservists Debt Relief Act of 2008. Subdivision (n)(1) was added to the model Interim Bankruptcy Rule and subdivisions (n)(1) and (n)(2) of the model Interim Bankruptcy Rule were renumbered as subdivisions (n)(2) and (n)(3).

INTERIM BANKRUPTCY RULE 1007-I: LISTS, SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS; TIME LIMITS; EXPIRATION OF TEMPORARY MEANS TESTING EXCLUSION

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(b) Schedules, Statements, and Other Documents Required.

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- (4) Unless either: (A) § 707(b)(2)(D)(i) applies, or (B) § 707(b)(2)(D)(ii) applies and the exclusion from means testing granted therein extends beyond the period specified by Rule 1017(e), an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form.

- (c) **Time Limits.** In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h), and (n) of this rule. In an involuntary case, the list in subdivision (a)(2), and the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 15 days of the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 15 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 45 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States Trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

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(n) Time Limits for, and Notice to, Debtors Temporarily Excluded from Means Testing.

- (1) Within seven days of the petition date, a debtor, excluded from means testing pursuant to § 707(b)(2)(D)(ii) of the Code, shall file or docket a statement of temporary exclusion from means testing. If a debtor, excluded from means testing pursuant to § 707(b)(2)(D)(ii) of the Code, is released from active duty after the petition date and before the case is closed, the debtor shall file or docket a statement of release from active duty within seven days of being released from active duty.

- (2) An individual debtor who is temporarily excluded from means testing pursuant to § 707(b)(2)(D)(ii) of the Code shall file any statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of the temporary exclusion if the expiration occurs within the time specified by Rule 1017(e) for filing a motion pursuant to § 707(b)(2).
- (3) If the temporary exclusion from means testing under § 707(b)(2)(D)(ii) terminates due to the circumstances specified in subdivision (n)(2), and if the debtor has not previously filed a statement and calculations required by subdivision (b)(4), the clerk shall promptly notify the debtor that the required statement and calculations must be filed within the time specified in subdivision (n)(2).

Notes:

(2008) CLERK'S NOTE: Subdivision (n)(1) is in addition to the provisions found in model Interim Bankruptcy Rule 1007-I. The paragraph clarifies the debtor's duty to docket a statement of temporary exclusion from means testing and requires the debtor to docket a statement of release from active duty, if released from duty during the pendency of the case, so that the Clerk of Court may send the notice required by subdivision (n)(3).

(2008) COMMITTEE NOTE: This rule is amended to take account of the enactment of the National Guard and Reservists Debt Relief Act of 2008, which amended § 707(b)(2)(D) of the Code to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. This exclusion applies to qualifying debtors while they remain on active duty or are performing a homeland defense activity, and for a period of 540 days thereafter. For some debtors initially covered by the exclusion, the protection from means testing will expire while their chapter 7 cases are pending, and at a point when a timely motion to dismiss under § 707(b)(2) can still be filed. Under the amended rule, these debtors are required to file the statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of their exclusion.

Subdivisions (b)(4) and (c) are amended to relieve debtors qualifying for an exclusion under § 707(b)(2)(D)(ii) from the obligation to file a statement of current monthly income and required calculations within the time period specified in subdivision (c).

Subdivision (n)(2) is added to specify the time for filing of the information required by subdivision (b)(4) by a debtor who initially qualifies for the means test exclusion under § 707(b)(2)(D)(ii), but whose exclusion expires during the time that a motion to dismiss under § 707(b)(2) may still be made under Rule 1017(e). If, upon the expiration of the temporary exclusion, a debtor has not already filed the required statement and calculations, subdivision (n)(3) directs the clerk to provide prompt notice to the debtor of the time for filing as set forth in subdivision (n)(2).