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Subject Interim Rule 1019(2)

Subdivision (2) of Rule 1019 is amended to provide a new filing period for motions under § 707(b) and (c) when a case is converted to chapter 7.

Section 707(b), however, specifically provides that a court "may dismiss a case *filed* by an individual debtor *under this chapter*...." Given this language, wouldn't this make 707(b) inapplicable when a case is filed under another chapter, e.g., ch. 13, and then converted?

The referenced language in 707(b) -- "*under this chapter*" -- is carried over from the prior version of 707(b). While old Rule 1017(e) has a 60 day time limit for filing a 707(b) motion, old Rule 1019(2) did not contain a new window for filing 707(b) motions. This appears consistent with 707(b)'s apparent limited applicability to cases that are initially filed as chapter 7's.

While this may leave open the possibility of debtors filing under chapter 13 and later converting to avoid the application of the means test, courts could still deal with such cases under 707(a) which provides for dismissal for cause which a number of courts have held includes bad faith or totality of the circumstances (e.g., *Zick* and *Huckfeldt*).

Accordingly, given the plain language of 707(b), it does not appear appropriate to provide a new filing period for motions under § 707(b) when a case is converted to chapter 7.

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