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Sent: Wednesday, August 21, 2019 4:46 PM
To: RulesCommittee Secretary
Subject: Suggestion for the Bankruptcy Rules Advisory Committee

My suggestion identifies a problem that probably has no rules-based solution (I can't think of one), but I submit it anyway.

The suggestion concerns the certification a debtor must make under 11 U.S.C. § 1328(a) that all payments due for domestic support obligations have been made. Section 1328(a) makes that certification a condition of discharge in a chapter 13 case. The DSO certification is one of several certifications chapter 13 debtors have to provide.

Here's the problem: unlike the credit counseling and personal financial management certifications, the DSO certification is not linked to section 109(h)(4). That means there is no exemption for someone who can't provide the certification because of "incapacity, disability, or active military duty . . ." 11 U.S.C. § 109(h)(4). The debtor has to submit the certification; otherwise, no discharge.

That poses a problem when one of the debtors in a joint case (the husband, for instance) has died. It's hard to sign a certification when you're dead.

Joint debtors seem to die with some frequency. So at least once or twice a month, I see motions asking to have dead co-debtors exempted from the DSO certification requirement. (There is even a CM/ECF event for such a motion.) And I know judges who will grant these motions, at least in the absence of objection. Other judges, though, won't grant them. I won't – because the Code doesn't provide for an exemption.

When a motion doesn't work, another solution is for the surviving spouse to provide the certification, stating that to the best of the survivor's knowledge the deceased co-debtor wasn't subject to a DSO order or else had no unpaid DSO obligations. At least one decision, *In re Levy*, No. 11-60130, 2014 WL 1323165 (Bankr. N.D. Ohio 2014), suggests a surviving spouse can act on behalf of a deceased debtor and so can provide the certification. But I wonder if that's correct.

Rather than have courts engage in *Levy*'s legal analysis, it would be better if section 1328(a) resembled section 1328(g) and allowed for an exemption, at least in the case of "disability." The omission is likely a legislative oversight.

If, as I suspect, the problem is legislative, it probably can't be solved through a rule change. But I wanted to bring the problem to the Committee's attention anyway. If nothing else, perhaps the Committee can direct my suggestion to the right place.

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