

From: Wolfson, Mark J.

22-BK-B

Sent: Thursday, March 17, 2022 4:12 PM

To: RulesCommittee Secretary

Subject: Bankruptcy Rules 1020(b) and 2000-Request to Consider Change to Official Form309

I'm an almost 40 year lawyer with large part of my practice focused on business bankruptcies. I am a Past Chair of the Florida Bar Business Law Section and its Bankruptcy/UCC Committee, although I write you solely in my individual capacity. I have shared my concern with Bankruptcy Judge Cathy McEwen, before whom I practice, and I know has an interest in bankruptcy rules matters. She provided me your contact information.

I was involved recently in a bankruptcy case in the Middle District of Florida that highlights the need for a clarification to the initial official notice form issued by the bankruptcy clerks of the court when a Subchapter V Chapter 11 case is filed. Current Official Form 309 does not include the very early deadline imposed by Rule 1020(b) for creditors or other parties in interest to object to a debtor's designation of a chapter 11 case as a Subchapter V case. The client did not retain bankruptcy counsel earlier enough because it was unaware of the deadline (notwithstanding the existence of Bankruptcy Rule 2010(b)). In short, the deadline set out in Rule 2010(b) should be added to current Section 8 of Official Form 309E2 for Subchapter V cases (and for such cases filed by business entities).

The failure to include this deadline in the first official notice is somewhat misleading, albeit unintentional, to creditors who receive their first Notice of Chapter 11 Bankruptcy Case. It is clearly the case that in most cases business contacts, not lawyers, receive the initial bankruptcy notices sent to the matrix in a newly filed bankruptcy case. However, the initial Notice to Creditors expressly lists in item 8 all the other key deadlines but leaves out the Subchapter V early, material deadline. It is arguably unfair for creditors, after having received an official notice with important deadlines, to figure out there is another unpublished very early deadline that affects a "jurisdictional-type" threshold issue in Subchapter V cases. My guess this was just an oversight since the Subchapter V concept is relatively new, but adding it is better for the fair administration of the bankruptcy process. I am not sure it is the appropriate place, but the following underlined sentence could be added to Rule 1020(b). I take no pride in authorship of how or where to address the issue, which I believe merits clarification.

Rule 1020(b) OBJECTING TO DESIGNATION. Except as provided in subdivision (c), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under §341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later. The foregoing deadline shall be included in the official form issued by the clerk of the court providing notice to creditors and parties in interest of the filing of the case and first meeting of creditors required by Rule 2002.

If for reason I am missing something related to this issue, I welcome your response. I look forward from hearing back from your Committee or representative with any questions or comments. Thank you for consideration of my request.

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