



Trustee to the Debtors regarding their Payment delinquency. In his Motion, the Trustee also seeks clarification regarding the time within which the Debtors are allowed to respond to the Motion.

## DISCUSSION

The period of time within which parties must respond to a motion to dismiss a chapter 7, 11, 12, or 13 case in this District is not clear. Rule 1017(a) of the Federal Rules of Bankruptcy Procedure requires notice as provided in Federal Rule of Bankruptcy Procedure 2002 for dismissal for want of prosecution or other cause.<sup>1</sup> The Advisory Committee Note to the 1991 Amendments to Federal Rule of Bankruptcy Procedure 1017(a) indicates that “[s]ubdivision (a) is amended to clarify that all entities required to receive notice under Rule 2002, including but not limited to creditors, are entitled to the 20 day notice of the hearing to dismiss the case.” This statement of purpose indicates that the rule was intended to cover the notice requirements for all entities entitled to receive notice, without any distinction as to the chapter involved. However, Federal Rule of Bankruptcy Procedure 2002(a)(4) provides twenty-day notice for dismissal of chapter 7 (other than 11 U.S.C. § 707(b)), 11 and 12 cases only, and does not specifically include chapter 13 cases. Case law and commentators have generally ignored the omission of a reference to chapter 13 in Federal Rule of Bankruptcy Procedure 2002(a)(4), and have applied the twenty-day time period to chapter 13 cases as well. *In re Anderson*, 70 B.R. 883, 888 (Bankr. D. Ut. 1987) (Fed. R. Bankr. P. 2002(a) twenty-day notice requirement for a motion to convert or dismiss a case under chapter 7 or 11 should also apply to chapter 13); 3 KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY § 8.11, n.21, at 8-8

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<sup>1</sup> Fed. R. Bankr. P. 1017(a) provides, in relevant part, that “a case shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to a hearing on notice as provided in Rule 2002.”

(2nd. ed. 1994) (“Bankruptcy Rule 2002(a)(5)<sup>2</sup> should be applicable in Chapter 13 cases but, for reasons unexplained by the Rules drafters, it applies only in cases under other chapters. Chapter 13 should be added to the list of chapters to which Bankruptcy Rule 2002(a)(5) applies.”) (footnote added). *But see, In re Gordon*, 1996 WL 673169, \*2 (Bankr. N.D. Ohio 1996) (“Rule 2002(a)(5), by its terms, does not apply to dismissal of chapter 13 cases.”)

To further confuse matters, the current Local Rules of Practice of the United States Bankruptcy Court for the District of Utah (Local Rules) reference a ten-day notice period.<sup>3</sup> *See* Local Rule 2003-1(a) (providing for ten-day dismissal for failure to attend a meeting of creditors under all chapters of the Code); Local Rule 2083-1(b) (providing for ten-day dismissal for failure to make initial chapter 13 plan payment); Local Rule 5005-1(b)(1) (providing for ten-day dismissal for failure to timely file certain papers under all chapters of the Code). In addition, Official Form 9, Notice of Commencement of Case, circulated by the Clerk of Bankruptcy Court in the Debtors’ case informed the Debtors that “[t]his case may be dismissed 10 days after a creditor’s meeting if the debtor(s) or debtor’s counsel fail to attend the meeting, to timely file a statement, schedule, or plan, or to make a required payment.” To further perplex parties in interest as to the appropriate time to object, the current version of Official Form 9<sup>4</sup> used in this District informs

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<sup>2</sup> The 1994 version of Federal Rule of Bankruptcy Procedure 2002(a)(5) is identical to the current version of Federal Rule of Bankruptcy Procedure 2002(a)(4). The subparagraphs in Bankruptcy Rule 2002(a) were renumbered in 1996, but the language of the subparagraph at issue was not changed. *See* Committee Note to 1996 Amendments (indicating that the paragraphs in subdivision (a) were renumbered).

<sup>3</sup> Prior Standing Order 3 and its attached Trustee’s Directive also provided for dismissal of a Chapter 13 debtor’s case unless an objection was filed to the Trustee’s Motion to Dismiss and Declaration of Non-compliance within ten days. Standing Order 3 was superseded by the Local Rules that became effective February 24, 1997.

<sup>4</sup> Official Form 9, Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates, was amended in September of 1997 and its use became mandatory starting March 1, 1998.

parties that a debtor's case may be dismissed on twenty-days notice, but cites to Local Rules 2003-1, 3082-1, and 5005-1 which require only ten-days notice prior to dismissal. It has, until recently, been this Court's practice to follow its Local Rules and dismiss cases if no response was filed within ten days.

Where, as here, the Local Rules conflict with the Federal Rules of Bankruptcy Procedure, the Federal Rules of Bankruptcy Procedure control. *Burger King Corp. v. Wilkinson (In re Wilkinson)*, 923 F.2d 154, 155-56 (10th Cir. 1991) (local rule that is inconsistent with the bankruptcy rules is invalid); Fed. R. Bankr. P. 9029(a)(1) (district court may authorize bankruptcy judges to make and amend rules of practice and procedure which are consistent with the Federal Rules of Bankruptcy Procedure); DUCivR 83-7.4 (district court authorizes the bankruptcy court to adopt rules of practice not inconsistent with Federal Rules of Bankruptcy Procedure). Since Local Rules 2003-1(a), 2083-1(b) and 5005-1(b)(1) all provide for a ten day notice period and conflict with the twenty day notice period provided in Federal Rule of Bankruptcy Procedure 2002(a), twenty days is the appropriate time in which to file an objection, absent specific order to the contrary. *Sunflower Racing, Inc. v. Mid-Continent Racing & Gaming Co (In re Sunflower Racing, Inc.)*, 226 B.R. 665, 671 (D. Kan. 1998) (bankruptcy court may shorten the twenty-day notice period in its discretion and for cause shown). Likewise, the appropriate time in which to file an objection to this Motion was also twenty days.

The Court notes that the Local Rules should be amended to be consistent with the Federal Rules of Bankruptcy Procedure. However, substantial changes to the Federal Rules of Bankruptcy Procedure have been proposed and are scheduled to become effective no later than December 1, 2000. In addition, Congress may consider significant bankruptcy reform during 1999. When these changes become effective,

the Local Rules will be amended. Until the Local Rules are amended, all parties should comply with the Federal Rules of Bankruptcy Procedure when, as here, there is a conflict between the Local Rules and the Federal Rules of Bankruptcy Procedure.

### **CONCLUSION**

The Debtors have failed to respond to the Trustee's Motion within twenty days of its filing. The Debtors are delinquent seven Payments and their unexplained delinquency constitutes cause for dismissal. The above-captioned case is therefore dismissed.

**DATED** this \_\_\_\_ day of January, 2000.

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JUDITH A. BOULDEN  
United States Bankruptcy Judge

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I, the undersigned, hereby certify that I served a true and correct copy of the foregoing **ORDER OF DISMISSAL** by mailing the same, postage prepaid, to the following, on the \_\_\_ day of January, 2000.

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