UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re: **Administrative Order 16-02**

Adoption of Interim Local Rule 1019-1
_____/

The Court has determined that amendments to this Court's existing Local Rule 1019-1 regarding conversion of chapter 13 cases to chapter 7 cases are required and also finds that there are exigent circumstances which justify implementation of these changes by an interim local rule, effective March 11, 2016. Accordingly, the Court **ORDERS** as follows:

1. Local Rule 1019-1 is amended by substituting the following text as Interim Local Rule 1019-1.

Rule 1019-1. Conversion and Reconversion - Procedure Following.

(A) **Extension of Time to File Post-Conversion Schedules.** Any motion pursuant to Bankruptcy Rules 1019 and 9006(b), to extend the time to file lists, schedules, statements or payment advices must set forth, if known, the date of the scheduled post-conversion meeting of creditors. If no date has been set, the motion should so state. Motions that seek to extend the time within seven days before the post-conversion meeting of creditors will be granted only after notice and hearing completed before the beginning of such seven day period.

(B) **Schedule of Postpetition Debts and Service Matrix and Notice Requirements.** The schedule of postpetition debts required by Bankruptcy Rule 1019(5) or subdivision (C) of this rule, shall be accompanied by a supplemental service matrix and notice to the affected parties shall be given as required by the "Clerk's Instructions for Preparing, Submitting and Obtaining Service Matrices" and Bankruptcy Rule 1009. If no unpaid debts have been incurred since the commencement of the case, a certification to this effect shall be filed.

(C) **Cases Converted to Chapters 11, 12, or 13.** Upon conversion to chapter 11, 12, or 13, and except as otherwise ordered, and subject to subdivisions (D) and (E) of this rule, all property shall be turned over to the debtor in a chapter 13 case or to the trustee or debtor in possession in a chapter 11 or 12 case. Upon conversion to chapter 11, 12, or 13, new time periods shall commence under Bankruptcy Rules 3002, 4004 and 4007. The final

report and schedule of unpaid debts required by Bankruptcy Rule 1019(5), shall be filed by the trustee in a case converted from chapter 7, and by the trustee or debtor in possession in a case converted from chapter 11 or 12. In a case converted from chapter 13, the trustee shall file the final report and the debtor shall file the schedule of unpaid debts. The deadline for fee applications arising from the superseded case is provided in Local Rule 2016-1(C)(2) and (4)(c).

(D) **Disposition of Funds by Chapter 12 Trustee Upon Conversion of Case.** Upon the conversion of a case under chapter 12 of the Bankruptcy Code, the trustee shall dispose of funds remaining after payment to the trustee of approved fees and costs, and upon payment of any other court authorized administrative expenses, in the same manner as provided for disposition of funds upon entry of the order dismissing case under Local Rule 1017-2(F).

(E) **Disposition of Funds by Chapter 13 Trustee Upon Conversion of Case to Chapter 7.** Upon the conversion of a case under chapter 13 of the Bankruptcy Code to chapter 7, the trustee shall dispose of funds remaining after payment to the trustee of approved fees and costs, subject to the provisions of subdivisions (F) and (G) of this rule, as follows:

(1) if the conversion occurs pre-confirmation, distribute the balance of the funds to the debtor after first paying

(a) any funds held by the chapter 13 trustee in trust in accordance with any vesting order entered in the case; and

(b) any unpaid claim allowed under 11 U.S.C. §503(b).

(2) if the conversion occurs post-confirmation, distribute the balance of the funds to the debtor after first paying

(a) any administrative creditor that the debtor has directed the chapter 13 trustee pay in accordance with an assignment valid under applicable non-bankruptcy law or other written direction signed by the debtor which assignment or written direction must be filed after the notice of conversion has been filed but no later than seven days after the notice of conversion has been filed; and

(b) to secured creditors any funds that are being held in trust for such secured creditor in accordance with a court approved vesting order.

(3) During the 90 days following the notice of conversion, the trustee shall not distribute any funds that are needed to cover checks issued by the trustee before the notice of conversion was filed. Any checks returned during the 90 day period may not be reissued by the trustee except in accordance with 11 U.S.C. §1326(a)(3), and if there are any checks still unnegotiated 90 days after the notice of conversion was filed the trustee must put a stop payment on those checks.

(F) **Temporary Retention of Funds by Chapter 13 Trustee upon Conversion by Notice of Conversion.** Upon the debtor's filing of a notice of conversion pursuant to 11 U.S.C. §1307(a), and for the purposes of determining what funds are to be turned over to the trustee in the converted case, the chapter 13 trustee shall continue to hold the funds not yet distributed, and not needed to cover outstanding checks, for a period not to exceed 30 days, unless extended by court order, or pending resolution of any motion filed in accordance with subdivision (G) of this rule.

(G) **Objection Motions Relating to the Notice to Convert.** Any party in interest, including a chapter 7 trustee in the converted case, but not the chapter 13 trustee, shall have 14 days from the filing of the notice of conversion to file either of the following motions (the "objection motions") in the chapter 7 case:

(1) a motion to determine whether the conversion was in bad faith such that all funds held by the chapter 13 trustee that would otherwise be returned to the debtor should be turned over to the chapter 7 trustee, or

(2) a motion to determine whether any or all of the funds held by the chapter 13 trustee were derived from a source other than the debtor's post-petition wages.

If no objection motion is filed, then the chapter 13 trustee shall distribute the funds in accordance with subdivision (E) of this rule. If an objection motion is filed the funds will be distributed as ordered by the court.

(H) **Extension of Chapter 13 Trustee Final Report Deadline**. If an objection motion is filed, the deadline for the chapter 13 trustee to file a final report in accordance with Bankruptcy Rule 1019(5)(B)(ii) shall be extended until 30 days after the hold period expires or such later date as the court orders.

(I) **Filing Claims in Cases Converted From Chapter 13 to Chapter 7.** Chapter 13 cases converted to chapter 7 shall be designated as no asset

cases. Upon the filing of a "Notice of Assets" by the chapter 7 trustee in a case converted from chapter 13, a claims bar deadline shall be established pursuant to Bankruptcy Rule 3002(c)(5).

(J) Deadline for Filing Postpetition Claims.

(1) In Converted Cases. Pursuant to Bankruptcy Rule 1019(6), the deadline for filing by a non-government unit of a request for payment of an administrative expense or a claim filed pursuant to §348(d) of the Bankruptcy Code, shall be 90 days from the date of the post-conversion meeting. This deadline shall be subject to modification, as applicable, by the provisions of subdivisions (E) or (F)(2) of this rule, and Local Rules 3002-1, and 3003-1.

(2) In Reconverted Cases. In asset cases where a schedule of unpaid debts has been filed pursuant to Bankruptcy Rule 1019(5), and where a new claims bar deadline will not be set for all creditors since the original claims bar date had expired prior to conversion, the party filing the schedule of postpetition debts required by Bankruptcy Rule 1019(5) or subdivision (B) of this rule, shall file a timely motion requesting that the court set a deadline for postpetition creditors to file claims in accordance with Bankruptcy Rule 1019(6) and this subdivision. Service of the order setting deadline shall be provided by the party filing the motion.

(K) Extension of Deadline to Object to Exemptions in Converted Cases. The deadline for objection to exemptions in converted cases shall be extended pursuant to Local Rule 4003-1(B).

(L) Filing of Chapter Applicable Official Bankruptcy Forms 122A-1, 122A-1Supp, 122A-2, 122-B, 122C-1, and 122C-2 Upon Conversion of Case. Individual debtors converting to another chapter shall file any Official Bankruptcy Forms numbered 122A-1, 122A-1Supp, 122A-2, 122B, 122C-1, and 122C-2 that are applicable to the chapter the case is being converted to within 14 days of entry of the conversion order.

[Comment: The court has noted the split of authority regarding applicability of the means test upon conversion of a case. Reference in this local rule to the filing of Official Bankruptcy Form upon conversion does not constitute any conclusion by this court on this substantive issue.]

[Comment: See Bankruptcy Rules 1017(f) (proceeding to convert case) and 4003(b) (clerk's deadline for objecting to exemptions), Local Rule 2002-1(C)(1) (notifications of deadlines required in notices), Local Rule 3002-1(A) (claims deadline in cases converted from chapter 13 to chapter 7) and Local Rule 9013-1(D)(3)(h) (conversion of chapter 7 case by debtor on negative notice).]

2. All cross-references in the Local Rules to Local Rule 1019-1, including any references contained in the official comments thereto, and in all court forms, guidelines, and clerk's instructions shall be amended to reflect, where applicable, the renumbered sections resulting from adoption of Interim Local Rule 1019-1.

3. The Clerk of Court is directed to provide notice of entry of this Order and to publish updated Local Rules, court forms, guidelines and clerk's instructions that incorporate amendments required by adoption of Interim Local Rule 1019-1.

ORDERED in the Southern District of Florida this 11 day of March, 2016.

Paul G. Hyman, Jr.
Chief United States Bankruptcy Judge

c: All S.D. Bankruptcy Judges
Clerk of Court