

## **Rule 1017-1: Dismissal of Case**

**(a) Notice of Proposed Dismissal.** Notice of the proposed dismissal of a case for failure to file in a timely manner the schedules, statements or chapter 11, 12 or 13 ~~plan~~Plan shall be given in the notice of meeting of creditors to all creditors and other interested parties.

**(b) Dismissal Without Further Notice.** Failure of the debtor to file in a timely manner the documents required by the Rules or the Local Rules or to appear at the meeting of creditors shall be cause for dismissal of the bankruptcy case without further notice. Notwithstanding Code § 521(i)(1), no case shall be deemed dismissed except upon entry of an order of dismissal.

~~**(c) Reinstatement.** A case dismissed for failure of the debtor to timely file a required document or for failure to appear at the meeting of creditors may be reinstated on motion of the debtor pursuant to Bankruptcy Rule 9024, provided that all required documents are filed, or on motion of another party. The clerk shall not close a dismissed case until 60 days after the date of dismissal.~~

### **(d)(c) Motion to Dismiss by Chapter 7 Debtor.**

1. Motion. Any motion to dismiss a case shall state:

A. whether the case has been previously converted from another Chapter of Title 11 and,

B. if there are any pending motions to convert or dismiss with prejudice.

2. Service. Motion shall be served on the case trustee, the United States Trustee and any interested party who has appeared in the case.

3. Objection. An objection to the motion must be filed in accordance with Local Rule 9013-1(c).

A. Hearing. If an objection is filed, the movant must schedule a hearing on the motion to dismiss and the objection, giving a minimum of fourteen (14) days notice to the objecting party, the case trustee and the United States Trustee, unless otherwise instructed by the Court.

4. No Objection. If no objection to movant's motion is filed, the Court may enter an order dismissing the case.

### **(d) Motions to Dismiss by Parties Other than Debtor.**

1. Motion. A motion seeking dismissal of a case pursuant to Code § 521(i)(2) must be filed by a creditor or party in interest along with a notice requiring a response to be filed within fourteen (14) days of service. The motion shall state the missing

one or more of the six items identified in Code § 521(a)(1)(A) and (a)(1)(B)(i) through (v). If the docket contains a filing denominated as such but which the moving party contends fails to include all the contents required by Code § 521(a)(1) or required by the Bankruptcy Rules, Local Rules or Official Forms, the motion shall identify the alleged deficiency.

2. Service. The movant shall serve the motion on the debtor, debtor's counsel if debtor is represented, the case trustee, the United State Trustee and any interested party who has appeared in the case.

3. Objection. An objection to the motion must be filed in accordance with Local Rule 9013-1(c).

A. Hearing. If an objection is filed, the movant must schedule a hearing on the motion to dismiss and the objection, giving a minimum of fourteen (14) days notice to the objecting party, the Case Trustee and the United States Trustee, unless otherwise instructed by the Court.

4. No Objection. If no such objection is timely filed, the Court may dismiss the case without further notice or hearing.

#### **(e) Dismissal with Prejudice.**

1. Unless otherwise stated in the dismissal order, an order dismissing a bankruptcy case that provides that the dismissal is with prejudice means that the debtor is prohibited from filing another bankruptcy petition for 180 days from the date that the dismissal order is entered upon the docket.

2. If the debtor attempts to file a subsequent bankruptcy petition within the 180 day period, the clerk is directed to accept the petition for filing, to assign the new case to the judge that entered the dismissal order, and to immediately generate and present to the court an appropriate Order to Show Cause as to why the new case should not be dismissed based on the court's prior order. The Order to Show Cause will then be set and treated as an expedited matter.

3. Nothing in this rule prevents the clerk from obeying a specific order entered by a judge of this court. Nor does this rule prohibit a judge from entering such further orders or injunctions as are necessary to prevent an abuse of the bankruptcy process or to prohibit frivolous pleadings and filings, based on the facts of that particular case.

#### **~~(e) Order for Dismissal.~~**

~~1. Notwithstanding Code § 521(i)(1), no case shall be deemed dismissed except upon entry of an order of dismissal.~~

~~2. If a party moves for dismissal pursuant to Code § 521(i)(2) and if such motion specifically requests dismissal within seven days, the Court may dismiss the case~~

~~without further notice or hearing if the docket is missing one or more of the six items identified in Code § 521(a)(1)(A) and (a)(1)(B)(i) through (v). If the docket contains a filing denominated as such but which the moving party contends fails to include all the contents required by Code § 521(a)(1) or required by the Bankruptcy Rules, Local Rules or Official Forms, the motion shall identify the alleged deficiency. The movant shall serve the motion on the debtor and the trustee along with a notice requiring a response to be filed within 14 days of service. If no such response is timely filed, the Court may dismiss the case without further notice or hearing. If a response is timely filed, the Court will either rule on it or set it for hearing.~~

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~~Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.~~ **(f) Reinstatement.**

1. Motion. A case dismissed for failure of the debtor to timely file a required document, for failure to appear at the meeting of creditors or failure to pay a fee may be reinstated on motion of the debtor pursuant to Bankruptcy Rule 9024 or on motion of another party. The motion shall state the following:

A. reason for case dismissal;

B. explanation of debtor or debtor attorney's failure to comply with court requirements resulting in dismissal of the case; and

C. description of actions taken to remedy the reason for the dismissal such as filing of required documents or proof of payment of the required fee.

The clerk shall not close a dismissed case until 60 days after the date dismissal was entered.

2. Service. A debtor shall serve the motion to reinstate on the case trustee, the United States Trustee and any interested party who has appeared in the case.

3. Objection. An objection to the motion to reinstate must be filed within fourteen (14) days of service of the motion.

A. Hearing. If an objection is filed, the debtor must schedule a hearing on the motion to dismiss and the objection, giving a minimum of seven (7) and a maximum of fourteen (14) days notice to the objecting party, the Case Trustee and the United States Trustee.

4. No Objection. If no objection to debtor's motion is filed within fourteen (14) days, the Court may enter an order reinstating the case.

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Comments/Intent of rule and revision:

Clarify the grounds for dismissal and provide a notice period for parties in interest to object, if applicable.

This rule was significantly overhauled to be in compliance with Fed.R.Bank.P. 1017 and 2002 and to institute the reinstatement provision in the rule.