IN THE UNTED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISCTICT OF WEST VIRGINIA

IN RE:	)
	)
CLERK'S INSTRUCTIONS REGARDING	)
CASE REOPENING PROCEDURES, FEES,	)
AND STANDARDS	)

CASE REOPENING PROCEDURES, FEES, AND STANDARDS

To facilitate the resolution of common questions that arise between the Clerk's Office and parties regarding the filing of motions to reopen bankruptcy cases, the Bankruptcy Clerk has set forth the following non-binding procedures, fees, and standards to assist parties in navigating the administration and adjudication of such motions.

I. Reopening Procedures

a. Timeliness of Motion

A motion to reopen may be filed at any time. The motion is not subject to the requirements regarding relief from a judgment or order under Fed. R. Civ. P. 60; Fed. R. Bankr. P. 9024.

b. Contents of Motion

The contents of a motion to reopen are not prescribed. At a minimum, the motion should state:

- the purpose for filing the motion; *i.e*., what contemplated proceeding will follow should the Court grant the motion;
- the name of the parties who would be involved or have an interest in the subsequent matter or proceeding;
- whether a trustee should be appointed if the case is reopened; and
- any special noticing instructions for the Clerk.

c. Contents of Proposed Order

The motion to reopen must be accompanied by a proposed order. The proposed order, at a minimum, should provide: "For the reasons stated by the moving party in the motion to reopen, it is ORDERED that the above-captioned bankruptcy proceeding is REOPENED." If the United States trustee is submitting the proposed order, it should provide for the appointment of a trustee, as applicable.

d. Service of the Motion

Service of a motion to reopen is not required. Filing a motion to reopen does not initiate a contested matter. *9 Collier on Bankruptcy* ¶ 5010.02[5] (Matthew Bender 2013). The best practice is for the party filing the motion to serve the United States trustee, the previous case trustee, and any party that would be interested in participating (or required to participate) in litigation should the motion be granted. *Id*.

e. Notice of the Motion

On the filing of a motion to reopen a bankruptcy case, the Clerk will generally issue a 21-day notice based on the previously provided mailing list – which includes any previously discharged trustee. The Clerk may limit the notice recipients to the entities listed on the motion's certificate of service, but will always include the United States trustee and any previously discharged Chapter trustee in the notice. If parties entitled to receive notice of the motion to reopen are not on the main case's former mailing matrix, the movant should specifically direct the Clerk to issue notice to those parties, and ensure that proper notice is sent by the Clerk.

f. Motion to Shorten Notice / Ex Parte Relief

The Clerk's general 21-day notice by mail to parties of the time to object to the motion to reopen is not prescribed by federal statute or rule. The Clerk issues the notice because reopening of a main bankruptcy case is not automatic: it requires a showing of "cause." In the motion to reopen, the movant may request the Court grant ex parte relief and immediately reopen the case. In the alternative, the movant may request that the Court shorten the 21-day notice.

g. Filing Documents in the Main Case Before the Motion to Reopen is Granted

A party may file documents in a closed case before the Court rules on the motion to reopen. Although filings may be made in a case that has not yet been reopened, no action is generally taken on those filings until such time as the motion to reopen is granted. If the motion to reopen is denied, proceedings on the filed documents may be administratively terminated.

h. Objection to Motion to Reopen

Any objection to reopening the main bankruptcy case should establish that "cause" does not exist to reopen the bankruptcy case. Any objection must be served on the party moving to reopen the case. The objection initiates a contested matter.

The reopening of a case is a ministerial act. *Cusano v. Klein*, 264 F.3d 936, 948 (9th Cir. 2001) ("[T]he mere reopening of a bankruptcy case is a ministerial act that 'lacks independent legal significance and determines nothing with respect to the merits of the case.'") (citation omitted). For this reason, objections to a motion to reopen should not attempt to address the merits of any litigation that would follow should the motion to reopen be granted; any argument regarding the merits of the underlying litigation should be related to the judicial determination of whether "cause" exists to reopen the case.

i. Adjudication of Motion and any Objection

Unless the Court grants ex parte relief, a motion to reopen is submitted for adjudication when the objection period expires. If no objection is timely filed, the Clerk submits the proposed order to the Judge for consideration. If an objection is filed, the Court may adjudicate the dispute based on the contents of the motion and the objection, or may set the matter for a hearing.

j. When a Motion to Reopen is not Required.

A motion to reopen is not required to file or have adjudicated an application for unclaimed funds. Unclaimed funds applications may be filed and adjudicated in closed cases.

A motion to reopen is not required when a party requests that the Clerk correct a clerical error in the record.

Generally, a motion to redact a record is ministerial in nature and does not impact the administration of the estate. In the event that a party does file a motion to reopen to redact a record, or if the court reopens the case, Item 11 of the Bankruptcy Miscellaneous Fee Schedule, effective December 1, 2014, specifies that the reopening fee must not be charged to redact a record already filed in the case, pursuant to Fed. R. Bankr. P. 9037.

II. Reopening Fees

a. Fee Amount

The reopening fee is due when the motion is filed. No refund is available if the Court denies the motion to reopen. As of December 1, 2014, the below reopening fees apply. Updated fee schedules are available on the Court's website: www.wvnb.uscourts.gov. By Judicial Conference Resolutions dated November 1, 2003 and January 1, 1998, the United States trustee is exempt from paying a reopening fee unless acting as a private trustee.

- $245 – Chapter 7 (plus a $15 trustee surcharge for a total fee of $260)
- $1167 – Chapter 11
- $200 – Chapter 12
- $235 – Chapter 13

d. Deferred Fee

When a trustee has standing to reopen a case, or when the United States trustee is acting as a private trustee, the reopening fee may be deferred pending the discovery of assets, and waived if no assets are found. Item No. 11 Bankruptcy Court Misc. Fee Schedule.

c. Installment Payments

The reopening fee may not be paid in installments. Fed. R. Bankr. P. 1006.

d. Fee Waiver

The Court may waive reopening fees for individual debtors or creditors seeking to reopen a proceeding. Fee waivers are in accordance with Judicial Conference policy. 28 U.S.C. § 1930(f)(3). One such articulated policy is to waive reopening fees for individual debtors in Chapter 7 that file an approved in forma pauperis affidavit. § 1930(f)(1). The Clerk's Office will provide the required form on request.

e. Unpaid Fees in Closed Case

When a debtor moves to reopen the debtor's own case, the Clerk is required to collect any unpaid fees owed by the debtor in addition to the reopening fee.

f. Motion and Fee Due Chart

Document or Proceeding		**Motion to Reopen Main Case**	**Collect Fee / Notes**
1	Alter or amend a judgment in a closed adversary proceeding	No	No. A motion to reopen is not required in adversary proceedings; however, a motion to reopen the main case must be filed and the fee paid if the adversary is being reopened for the purpose of attempting to revoke discharge.
2.	Enforce a judgment in a closed adversary proceeding	No	No. A motion to reopen is not required in adversary proceedings.
3	File a complaint to determine dischargeability of debts listed in 11 U.S.C. § 523(a), other than the types of debts listed in § 523(c)	Yes	No. Fed. R. Bankr. P. 4007(b).
4.	File a complaint to except debts from discharge under 11 U.S.C § 523(c)	Yes	Yes. Because there are strict time constraints to file a complaint under § 523(c), it would be an extremely rare occurrence for the main case to be closed before those deadlines expired. *See* Fed. R. Bankr. P. 4007(c). Check to ensure the complaint is not time-barred before filing the motion to reopen.
5.	File an Adversary Proceeding to revoke discharge under § 727(d)	Yes	Yes.
6.	File an adversary proceeding to obtain assets for the estate	Yes	Yes. The fee may be deferred when the motion is filed by the case trustee or United States Trustee. Item No. 11 Bankruptcy Court Misc. Fee Schedule.
7.	File an action related to discharge under 11 U.S.C. § 524	Yes	No – when filed by the debtor. Item No. 11 Bankruptcy Court Misc. Fee Schedule. A fee is due from a creditor seeking to litigate a matter under § 524.
8.	File course in financial management to fulfill a requirement to obtain a discharge	Yes	Yes. Item No. 11 Bankruptcy Court Misc. Fee Schedule.

9.	Motion to reopen filed and denied by the Court	Yes	Yes
10.	To correct an administrative error made by the Clerk or Court – not to correct an error made by a party.	Yes	No - Item No. 11 Bankruptcy Court Misc. Fee Schedule. The Clerk's Office may reopen a case without motion to correct its own administrative errors.
11.	Motion to reopen filed by the UST	Yes	No - Judicial Conference Resolution, November 1, 2003 and January 1, 1998
12.	Motion to reopen filed by the UST when acting as a private trustee	Yes	Fee is deferred until such time as assets are discovered, and waived if no assets are found. Item No. 11 Bankruptcy Court Misc. Fee Schedule.
13.	Motion to reopen filed by private trustee to recover assets for the estate	Yes	Fee is deferred until such time as assets are discovered, and waived if no assets are found. Item No. 11 Bankruptcy Court Misc. Fee Schedule.
14.	Motion to reopen filed by a creditor to recover assets for the estate	Yes	Yes
15.	Motion to reopen filed by a private trustee for a purpose other than to recover assets for the estate	Yes	Yes
16.	To add a creditor	Yes	Yes. The court routinely denies motions to reopen to add creditors in no asset Chapter 7 cases. If a debtor seeks to reopen an asset Chapter 7 case to add creditors, the proposed order reopening the case should provide at least 30 days for the omitted creditor to file a complaint under 11 U.S.C. § 523(a)(3). The debtor must ensure the Clerk transmits any signed order to the affected creditor(s). No reason exists to reopen a Chapter 13 case to add creditors that were not included in the confirmation order. A proposed amendment to Fed. R. Bankr. P 3002(c)(6), which may go into effect on December 1, 2015, may provide a basis for changing current procedures. If the case is reopened, the debtor must also pay the amendment fee.
17.	File a motion to avoid liens under 11 U.S.C. § 522(f)	Yes	Yes
18.	Modify a Chapter 11 Plan	Yes	Yes
19.	Modify a Chapter 13 Confirmation Order	Yes	Yes
20.	Prosecute a petition preparer	Yes	Yes- except when filed by the United States trustee
21.	File a reaffirmation agreement	Yes	Yes. The reaffirmation agreement must be made before discharge; otherwise no "cause" exists to reopen the case.
22.	Reconsider or vacate a judgment or order	Yes	Yes – unless it is an administrative error

	entered in the bankruptcy proceeding (not adversary proceeding)		made by the Court or Clerk
23.	Amend petition or schedules	Yes	Yes. A fee may also be due for amended schedules.
24.	Amend any filing in the bankruptcy proceeding	Yes	Yes
25.	Submit an agreed order to the Court	Yes	Yes
26.	Receipt of BNC Change of Address form	No	No
27.	Receive unclaimed funds	No.	No. This Office does not require a case to be reopened to process unclaimed funds applications. *Cf. Bank of America v. Solomon (In re Solomon)*, 2013 WL 166225 (Bankr. W.D. Pa. Jan. 15, 2013) (reopening required and fee due), *with In re Miniscribe Corp.*, 331 B.R. 448, 450 (Bankr. D. Colo. 2005) (reopening not required).
28	Redact Personal Information and Identifiers from a proof of claim or filed motion in the case.	Yes/No	A motion to reopen may be filed to redact a record, but reopening is not required. If a motion to reopen is filed, no reopening fee is due. Effective on December 1, 2014, a fee is due for filing the motion to redact.

III. Reopening Standards

Main case proceedings are reopened under 11 U.S.C. § 350(b). The case is reopened in the court in which it was closed. *Id*. By statute, a case "may" be reopened to:

- Administer assets
- Accord relief to the debtor, or
- For other "cause"

The decision to reopen a case is within the bankruptcy court's discretion. *E.g.*, *Thompson v. Virginia (In re Thompson)*, 16 F.3d 576, 581 (4th Cir. 1994); *Hawkins v. Landmark Finance Company (In re Hawkins)*, 727 F.2d 324, 326 (4th Cir. 1984).

a. Administer Assets

Generally, when a filing a motion to reopen for the purpose of administering assets for the benefit of pre-petition creditors, the assets sought to be administered must not have been previously abandoned by the trustee. "[O]nce an asset of the estate has been abandoned by the trustee, it is no longer part of the estate and is effectively beyond the reach and control of the trustee." *In re Sutton*, 10 B.R. 737, 739 (Bankr. E.D. Va. 1981). Thus, cause may not exist when a party seeks to reopen a case to administer an asset that was previously abandoned.

On the other hand, no abandonment occurs when the asset sought to be administered was unknown to the trustee at the time the case was closed. *E.g.*, *id.*, at 740 ("Property will not be deemed to have been abandoned by the trustee where it was actually concealed from him or where his knowledge of the existence of the property was one of mere suspicion, which engendered only a cursory investigation. The rule also is not applicable in those situations where the property is unscheduled by the debtor, thus preventing the trustee from having 'knowledge, or sufficient means of knowledge, of its existence.'") (citation omitted). Moreover, it is possible to revoke a previous abandonment of an asset if it can be shown that the trustee was given incomplete or false information about the asset by the debtor, which caused the trustee to forego a proper investigation of the asset. *E.g.*, *Cusano v. Klein*, 264 F.3d 936. 946 (9th Cir. 2001) ("Revocation of abandonment is appropriate, however, where 'the trustee is given incomplete or false information of the asset by the debtor, thereby foregoing a proper investigation of the asset.'") (citation omitted).

b. Accord Relief to the Debtor

Commonly, cases are reopened to "accord relief to the debtor" to:

- Enter a discharge if the debtor has completed a course in financial management after having failed to complete the course when the case was open;
- Enforce the discharge injunction of 11 U.S.C. § 524 based on a creditor's post-discharge collection attempts;
- Adjudicate an alleged discriminatory action that is prohibited by § 525;
- Ensure that the cure of a Chapter 13 mortgage default is effected;
- Determine if a debt was discharged;
- Allow the filing of a reaffirmation agreement that was "made" before discharge was entered; and
- Adjudicate a motion to avoid a judicial lien.

The court often receives motions to reopen to add creditors that were omitted in the original filing. In this District, 80-90% of all cases are "no-asset" Chapter 7s. In a no-asset Chapter 7 bankruptcy, a creditor's debt is nonetheless subject to discharge (with certain exceptions) under 11 U.S.C. § 727(b) even though the creditor never had notice of the filing because the debtor failed, either mistakenly or purposefully, to list that creditor on the schedules and mailing matrix. The reason for this is because, at the outset of a Chapter 7 case, creditors in this District are notified not to file proofs of claim unless directed to by the court. Fed. R. Bankr. P. 2002(e). No reason exists for a creditor to file a proof of claim unless the Chapter 7 trustee discovers unencumbered and unexempt assets to liquidate on behalf of creditors. Should the Chapter 7 trustee later discover assets of the Chapter 7 case, the Chapter 7 trustee would move to reopen the case and, at that time, would instruct the debtor's creditors to file proofs of claim.

Accordingly, in no-asset Chapter 7 cases, this Court has routinely denied motions to reopen a bankruptcy case for the purpose of adding creditors to the debtor's schedules

and mailing matrix because merely adding a creditor to the debtor's schedules does not affect the dischargeability of the debt. *E.g.*, *White v. Nielsen (In re Nielsen)*, 383 F.3d 922, 926-27 (9th Cir. 2004) ("[D]ischargeability is unaffected by scheduling in a Chapter 7 no assets, no bar date bankruptcy. Thus . . . reopening a closed bankruptcy case to permit the debtor to schedule an unlisted creditor would . . . have been a pointless exercise. A dischargeable debt would have been discharged . . . regardless of scheduling. . . . [F]iling of a claim is meaningless and worthless in a no assets case.") (citation omitted); *Watson v. Parker (In re Parker)*, 313 F.3d 1267, 1269 (11th Cir. 2002) ("Pursuant to § 727(b), the Debtor receives a discharge from all debts that arose before the date of the order for relief under Chapter 7, regardless of whether a proof of claim based on any such debt or liability is filed . . . . [T]he Debtor's Chapter 7 case was a no asset case with no claims bar date set; therefore, [the creditor] had suffered no prejudice because [the creditor] will have an opportunity to file a claim if any assets are discovered. . . . [The creditor's] claim was discharged by operation of law under § 727(b)."); *Zirnhelt v. Madaj (In re Madaj)*, 149 F.3d 467, 471 (6th Cir. 1998) ("[T]he rights of an omitted creditor in a no asset case do not conflict with the debtor's right to discharge, because, though he did not receive any earlier notice, [the creditor] has not lost his opportunity to file a proof of claim sufficient for him to share equally with creditors who were initially scheduled. . . . [The creditor's] claim is clearly dischargeable and he retains the right to file a claim for any future assets that might be discovered. . . . [A]mending the schedule is unnecessary to answer the question of whether the debt has been discharged.") (citation omitted); *Judd v. Wolfe (In re Judd)*, 78 F.3d 110, 115 (3rd Cir. 1996) ("In a case where there are no assets to distribute, however, the right to file a proof of claim is a hollow one. An omitted creditor who would not have received anything even if he had been originally scheduled, has not been harmed by omission from the bankrupt's schedules and the lack of notice to file a proof of claim. Thus, in a no asset Chapter 7 case where no bar date has been set, we conclude that there would be no purpose served by reopening a case to add an omitted creditor to the bankrupt's schedules."); *In re Hartley*, 343 B.R. 822, 824 (Bankr. N.D.W. Va. 2006) ("Ordinarily, no basis would exist to reopen a case for the purpose of adding a creditor to the Debtors' schedules.").

On the other hand, when the Chapter 7 case is one in which the trustee has administered assets, a debtor may seek to reopen the case to add omitted creditors and obtain a declaration of discharge under 11 U.S.C. § 523(a)(3).

Similarly, in Chapter 11 and 13 cases, a debtor may seek to clarify or modify the confirmed plan for a determination of rights with regard to an omitted creditor.

c. "Cause"

Reopening a case under this catch-all category is committed to the discretion of the bankruptcy court. *Hawkins v. Landmark Finance Company (In re Hawkins)*, 727 F.2d 324, 326 (4th Cir. 1984).

Last Updated:

May 31, 2013.

August 12, 2013.

February 24, 2015.