

Rule 1004-1.1

PETITION – FILING ON DEBTOR’S BEHALF BY A COURT-APPOINTED REPRESENTATIVE, HOLDER OF POWER OF ATTORNEY, PROPOSED NEXT FRIEND, OR GUARDIAN AD LITEM

(a) ***Filing of a Petition by a Court-Appointed Representative.*** If a bankruptcy petition is filed on a debtor’s behalf by a representative, such as a guardian or conservator, appointed by a court of competent jurisdiction before the filing of the petition, a copy of the appointment instrument shall be filed with the petition.

(b) ***Filing of a Voluntary Petition by the Holder of a Power of Attorney, Proposed Guardian Ad Litem, or Proposed Next Friend.***

(1) ***Declaration Required.*** Petitions filed by the holder of a power of attorney, proposed guardian ad litem, or proposed next friend (“Filing Party”) shall be accompanied by a copy of the power of attorney, if any, and the Filing Party’s declaration under penalty of perjury (“Declaration”). The Filing Party shall serve a copy of the petition and the Declaration on the debtor, all creditors, the U.S. Trustee, any governmental entity from which the debtor is receiving funds, and the debtor’s closest relative, if known.

(2) ***Contents of Declaration.*** The Declaration shall include the following information:

- (A) the reason for filing the bankruptcy petition;
- (B) the Filing Party’s name, address, and relationship to the debtor;
- (C) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;
- (D) if applicable, whether the power of attorney expressly authorizes the filing of a bankruptcy petition, and whether the debtor was a minor or has been adjudicated an incompetent person prior to the date of the power of attorney;
- (E) if applicable, why appointment of the Filing Party as next friend or guardian ad litem is necessary, including the reasons why the debtor is unable to file the petition himself or herself or otherwise unable to manage his or her financial affairs;
- (F) if applicable, why appointment of the Filing Party would be in the debtor’s best interest;
- (G) the fee, if any, that the Filing Party would charge the debtor for serving as next friend or guardian ad litem;

(H) the Filing Party's professional and criminal history, if any;

(I) the Filing Party's competence to handle the debtor's financial affairs, including the Filing Party's knowledge of the debtor's financial affairs;

(J) whether the Filing Party has any current or potential future interest in the debtor's financial affairs; and

(K) whether any of the debtor's debts were incurred for the benefit of the Filing Party.

(3) **Required Documents.** If appointment as guardian ad litem or next friend is sought on behalf of an incompetent person, the Declaration shall be accompanied by the following documents:

(A) a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs that may be filed under seal as set forth in Local Rule 5005-4; and

(B) a copy of any power of attorney or other document giving the Filing Party the authority to act for the debtor.

(4) **Status Conference Regarding Filing Party's Authority and Appointment of Guardian Ad Litem or Next Friend.** If a bankruptcy petition is filed on the debtor's behalf by the holder of a power of attorney, proposed guardian ad litem, or proposed next friend, the Court may schedule a status conference to consider the following:

(A) the Filing Party's authority to file the case on the debtor's behalf and, if applicable, the appointment of the Filing Party as the debtor's guardian ad litem or next friend; and

(B) dismissal of the case if the Filing Party has not complied with the requirements of this rule.

(5) **Waiver of Credit Counseling Requirement Under 11 U.S.C. § 109(h).** Regardless of when the debtor becomes incapacitated, the debtor may be excused from the requirement to receive credit counseling under 11 U.S.C. § 109(h) upon motion by the Filing Party.

(c) **Subsequent Incapacitation.** Should the debtor become incapacitated at any time after the filing of the Petition, the holder of a power of attorney, proposed guardian ad litem, or proposed next friend shall follow the procedures as outlined in section (b) above before any subsequent filing or requirement on behalf of the debtor.

Notes of Advisory Committee

2022 Amendment

This amendment outlines a procedure for waiving the credit counseling requirement under 11 U.S.C. § 109(h) for an incapacitated person as well as a procedure in the event a debtor becomes incapacitated after a petition is filed. This amendment also removes the limitation on a Filing Party's authority to act pending a status conference. This amendment to the rule is effective July 1, 2022.

2021 Amendment

This amendment renumbers the rule to be consistent with Fed. R. Bankr. P. 1004.1 (Petition for Infant or Incompetent Person). Subsection (b)(4) is revised to state that the Court "may" (as opposed to "will") schedule a status conference. This amendment to the rule is effective August 1, 2021.

2019 Amendment

This amendment provides a single procedure for petitions filed by the holder of a power of attorney or proposed guardian ad litem/next friend. The amended rule more clearly lists the information to be included in the required supporting declaration and the documents to be filed. In all cases, the Court will schedule a status conference to consider the filing party's authority to file the case on the debtor's behalf and the dismissal of the case if the listed requirements are not met. This amendment to the rule is effective July 1, 2019.

2017

This new rule establishes procedures for the filing of voluntary petitions by court-appointed representatives, holders of powers of attorney, guardians ad litem, and next friends. The rule specifies the information and documents that must be filed in support of a motion or in response to an order to show cause. This new rule is effective July 1, 2017.