

RULE 1002-1

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

(a) ***Voluntary Petition by a Court-Appointed Representative.*** If, before the petition date, a representative, such as a guardian or conservator, has been appointed by a court under nonbankruptcy law for a debtor who is an infant or incompetent person, then a copy of the appointment instrument must be filed with a voluntary petition.

(b) ***Voluntary Petition by the Holder of a Power of Attorney.***

(1) ***Prerequisites to Filing Petition.*** The holder of a power of attorney may file a voluntary petition on behalf of a debtor only if:

(A) the debtor is an individual;

(B) a written power of attorney, valid under nonbankruptcy law, expressly authorizes the holder of the power of attorney to file a bankruptcy petition on behalf of the debtor;

(C) extraordinary circumstances exist warranting the commencement of a bankruptcy case under the authority granted by the power of attorney; and

(D) the debtor is not a minor or been adjudicated an incompetent person prior to the date of the power of attorney.

(2) ***Duties of the Holder of Power of Attorney; Limit on Authority.***

(A) The holder of the power of attorney must sign the petition as attorney-in-fact for the debtor and file it with a copy of the power of attorney, the mailing address of the holder’s residence or place of business and a statement, signed under penalty of perjury, certifying each prerequisite set forth in paragraph (1) above and explaining the extraordinary circumstances described in (1)(C).

(B) The Court will issue an order that the attorney-in-fact and the debtor show cause why the case should not be dismissed.

(C) Unless and until the Court orders otherwise, the holder of the power of attorney shall take no other action in the bankruptcy case on behalf of the debtor.

(c) ***Voluntary Petition by Proposed Next Friend or Guardian Ad Litem.*** If, before the petition date, there has been no representative appointed by a court under nonbankruptcy law for a debtor who is an infant or incompetent person, then a proposed next friend or guardian ad

litem shall file a motion for appointment as next friend or guardian ad litem with the voluntary petition. If a motion for appointment of a next friend or guardian ad litem is not filed with the petition, the Court will issue an order that the individual filing the petition and the debtor show cause why the case should not be dismissed. Unless and until the Court orders otherwise, the proposed next friend or guardian ad litem shall take no other action in the bankruptcy case on behalf of the debtor.

(d) **Required Information.** Responses to an order to show cause why the case should not be dismissed and motions for the appointment of a next friend or a guardian ad litem shall be accompanied by a declaration under penalty of perjury by the holder of the power of attorney or proposed next friend or guardian ad litem that contains the following information:

- (1) the party's name, address, and relationship to the debtor;
- (2) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;
- (3) if applicable, why appointment of the party as next friend or guardian ad litem is necessary;
- (4) if applicable, why appointment of the party would be in the debtor's best interest;
- (5) the fee, if any, that the party would charge the debtor for serving as next friend or guardian ad litem;
- (6) the party's criminal, financial, and professional history;
- (7) the party's competence to handle the debtor's financial affairs, including the movant's knowledge of debtor's financial affairs;
- (8) whether the party has any current or potential future interest in the debtor's financial affairs; and
- (9) whether any of the debtor's debts were incurred for the benefit of the party.

(e) **Required Documents.** In cases where appointment is sought on behalf of an incompetent person, the declaration must be accompanied by the following documents:

- (1) a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs;
- (2) a letter from the debtor's caregiver regarding the debtor's ability to conduct the debtor's own affairs; and

(3) a copy of any power of attorney or other document giving the movant authority to act for the debtor.

(f) ***Service of Motion.*** The motion and declaration must be served under Fed. R. Bankr. P. 7004 on the debtor and notice thereof must be provided to the trustee, all creditors, the U.S. Trustee, any governmental entity from which the debtor is receiving funds, and the debtor's closest relative, if known.

Notes of Advisory Committee

2017

This 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.