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Subject

Dear Judge Zilly:

We have informally surveyed our offices regarding the implementation of Interim Rule 1007(b)(3) which requires the filing with the petition of a credit counseling certificate or a pleading requesting a waiver under sections 109(h)(3) or (4). Even though the Interim Rules were almost uniformly adopted, there appears to be significant non-conformity with enforcement of the pre-petition credit counseling requirement. Either by administrative order or informal procedure a number of courts grant automatic extensions for the filing of a credit counseling certificate. For example, the Western District of Washington implemented Local Rule 5003-1(a) which allows clerk office personnel, without court intervention, to grant a 30-day extension for the obtaining of credit counseling post-petition. In other districts, clerks issue a deficiency notice which gives the debtor 15 days to file a certificate of completion of credit counseling, but the notice does not require the debtor to show either pre-petition counseling or exigent circumstances to excuse the lack of pre-petition counseling.

We are concerned that while the Rules Committee spent considerable time developing uniform rules for implementation of the BAPCPA, individual courts have imposed substantive changes to those rules which alter the requirements of the new legislation. I would be grateful if you might consider either contracting the local courts to remind them of the section 109(h) requirement and/or consider a national rule to address this issue. Thank you.