



# I

In 1996 the debtor, James Daniel Kilgore, an attorney, gave a deed of trust to secure a loan from Powell Valley National Bank (the “Bank”). In 1999 the debt became delinquent and the Bank began foreclosure proceedings. The debtor filed in the bankruptcy court a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. The case was dismissed and the Bank reinstated foreclosure. Days before the sale, the debtor filed another petition under Chapter 13. Thereafter, on motion of the debtor, the case was converted to Chapter 7 and an order of discharge entered. The Bank obtained relief from the automatic stay and rescheduled a sale of the property. Before this sale was held, the debtor filed a third petition under Chapter 13.

The United States Trustee moved to dismiss the latest Chapter 13 petition on the ground that since the Chapter 7 case was still pending, the debtor had violated the local rule prohibiting the maintenance of more than one petition under any chapters of the Bankruptcy Code at the same time. *See* W.D. Va. Bankr. R. 1017-2.<sup>2</sup> The bankruptcy court granted the motion and dismissed the case by order entered on April 19, 2001. Thereafter the debtor noted an appeal of the order to this court.

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<sup>2</sup> “No debtor . . . may maintain more than one petition under any chapter or chapters of the United States Bankruptcy Code at the same time.

The second petition filed may be dismissed by the Court *sua sponte* or pursuant to motion of the United States Trustee or any interested party.” (Emphasis in original).

## II

The appellee first seeks dismissal of this appeal on the ground that the appellant did not designate a record on appeal or file a statement of the issues to be presented on appeal as required under Federal Rule of Bankruptcy Procedure 8006.

Rule 8006 provides, in part, that “[w]ithin 10 days after filing the notice of appeal . . . the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented.” Fed. R. Bankr. P. 8006. Dismissal for failure to comply with these procedural guidelines may be an appropriate sanction. *See* Fed. R. Bankr. P. 8001(a).

While the test for dismissal under rule 8001(a) requires that I only need to take one of the following steps: (1) make a finding of bad faith or negligence; (2) give the appellant notice or an opportunity to explain the delay; (3) consider whether the delay had any possible prejudicial effect on the other parties; and (4) consider the impact of the sanction and available alternatives, *see Resolution Trust Corp. v. SPR Corp. (In re SPR Corp.)*, 45 F.3d 70, 72 (4th Cir. 1995), a fair reading of the test “will normally require a district court to consider and balance all relevant factors.” *Id.* at 74.

Balancing the factors set forth in *In re SPR Corp.*, and considering the “harsh” nature of such a sanction, *id.* at 73, I find dismissal of the present appeal unwarranted. Regardless of the appellant’s failure to comport with the requirements of rule 8006, the

prejudice visited upon the appellee by this court's exercise of its discretion not to dismiss the instant appeal is minimal. The thorough brief submitted by the appellee on the merits reflects no unfair surprise or uncertainty of issues stemming from the appellant's failure to so comply. I will thus turn to the merits of the appellant's arguments.

Reviewing the decision of the lower court for an abuse of discretion, *see United States v. Jackson (In re Jackson)*, 190 B.R. 808, 810 (W.D. Va. 1995), the pleadings and supporting documents before me demonstrate that no such abuse occurred in the dismissal of the appellant's third Chapter 13 petition. It is clear to this court that, despite his argument to the contrary, the appellant was simultaneously "maintaining" two bankruptcy petitions within the meaning of, and contrary to, local rule 1017-2.

Finally, while the appellant argues that local rule 1017-2 is overly broad and vague, I find such an argument to be without merit. There is nothing vague in a proscription against simultaneous entertainment of multiple bankruptcy petitions. Additionally, because local rule 1017-2 governs only practice and procedure and abridges no substantive right, *see King Res., Co. v. Phoenix Res. Co. (In re King Res. Co.)*, 651 F.2d 1349, 1351 (10th Cir. 1981), I find that the appellant has not met his "heavy" burden of establishing the impermissibility of such a rule. *See Wolff v. Wells Fargo Bank (In re Moralez)*, 618 F.2d 76, 78 (9th Cir. 1980).

III

For the aforementioned reasons, the order of the bankruptcy court will be affirmed. An appropriate judgment will be entered.

DATED: July 31, 2001

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United States District Judge