



MEMORANDUM

To: Bankruptcy Bar, Middle District of Georgia
From: William E. Tanner, Clerk of Court
Subject: SECTION 522 (f) - Lien Avoidance Motions

March 12, 2010

The judges of this court have met and reviewed the current practice utilized by many attorneys in seeking avoidance of judicial liens. It has been observed that most of the orders submitted for signature provide for the total elimination of a judicial lien as to all the debtors property with no mention or treatment of whether any of the property of the debtor could possibly still have nonexempt equity subject to the judicial lien. The judges have concluded that many of the motions and orders are defective.

For future motions, attorneys should adjust their pleadings to either specifically plead what property is being impaired by the judicial lien, taking the necessary steps to plead the fact that there is no equity that cannot be exempted. Another method or statement to address this issue would be to allege in your pleading that all of the debtor's personal and real property is subject to the judicial lien and there is no equity in any of the debtor's property that cannot otherwise be exempted, and therefore, the judicial lien impairs the debtor's ability to claim the exemption in all of the debtor's personal and real property. Such a pleading can then be granted in light of no objection from creditors with an order that in fact states the lien is voided as to all of the debtor's personal and real property. If the pleading merely states that the judicial lien impairs an exemption which the debtor is entitled to but does not represent that the debtor's position is that there is no equity in any property, the court is not willing to enter an order that voids the lien as to all of the debtor's personal and real property.

Furthermore, attorneys should not place into their order any provisions that provide for a clerk or the respondent to record, mark, or otherwise take any action to actually cancel any liens. It is incumbent upon the movant to take the necessary steps to file the appropriate order to put into effect the avoidance of the lien.

Finally, all orders avoiding judicial liens should state that the lien will be voided upon the entry of the discharge and should not use language that says that the lien is hereby canceled without making that cancellation contingent upon the entry of the discharge.

With regard to any and all pending motions to avoid judicial liens, if your motion does not contain language similar to what is noted above, you have two options in order to ensure that your motion to avoid lien can be processed through the court. First, you can submit an order that states that the judicial lien is voided **only to the extent that it impairs an exemption**. It is recognized that such

an order may present a continuing cloud upon title and is the reason why most orders submitted in lien avoidance actions provide for a total cancellation of the judicial liens. If you want to obtain an order that voids and cancels the entire lien and your motion does not contain the language as noted above with regard to equity, then you will need to file an amended motion and notice that to the respondents providing a new opportunity for exemption.

This memo will be disseminated as quickly and as thoroughly a manner as possible to maximize distribution. However, you may also receive contacts from the clerk's office advising you to review this memo on the court's webpage.

If any attorney feels their motion or order is appropriate and should be submitted to the court without any adjustment, please direct all of your questions and inquiries to me directly. I will do everything in my power to assist you in complying with the court's desires in this matter.

WET/kp