

**PROPOSED AMENDMENTS  
SUBMITTED BY THE RULES COMMITTEE FOR  
CONSIDERATION BY JUDGES**

**Introduction**

The Advisory Committee on Local Rules (“the Committee”) convened in late 2011 for the principal purpose of determining how best to include references to the local rules of the District Court. The practice of cross-referencing to the District Court’s rules by number only had proven to be less than ideal because (a) the cross-references required the reader to visit the District Court’s rules to find guidance; and (b) occasional failure to track changes the District Court made to its rules resulted in erroneous references.

The Committee decided to recommend that the Bankruptcy Court’s local rules capture the specific language desired from the District Court’s rules, except in those few instances where the subject matter of the District Court’s rules rarely arose in bankruptcy cases and proceedings OR the District Court’s rules were so voluminous cross-reference remained the most efficient option. After analysis, the Committee recommends that only the following rules continue to include cross-references: B-7016-1, Pre-Trial Procedures in Adversary Proceedings, which contains a cross-reference to District Rule 16-1; B-7069-1, Execution/Enforcement of Judgments, which refers to District Rules 69-1 through 69-3; and B-9015-1 on Jury Trials, which refers to various District Rules on the subject. These three rules are **not** included in these proposals, as no changes to those rules are proposed.

The Committee also worked to capture the shifting of responsibility for distribution or service of various documents from the Clerk to parties. Other substantive changes have been proposed based upon procedural changes implemented by the Court or changes sought by Committee members as a result of challenges experienced attempting to interpret or enforce the Rules. The reasons for the proposed substantive changes are discussed in the Committee Comments after each rule.

Finally, the Committee sought to bring uniformity to the language used in the Rules, particularly references to certificates of service and the distinction between ‘serving’ and ‘distributing’ or ‘sending’ documents. (When possible, the Committee followed the language used in the national rules; where those rules are silent the Committee fell back on the concept that documents most like pleadings get *served*, and documents most like notices are *distributed*. In some situations, custom trumped this concept, and if a group of documents includes a motion, then ‘serve’ is used as the verb.)

## **B-1009-1. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES, AND STATEMENTS OF FINANCIAL AFFAIRS**

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### **(b) Amendments Adding Creditors: Notice Requirements**

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- (2) The Debtor shall give notice to added creditors and provide copies of notices and documents in the case as appropriate, including the notice of the meeting of creditors with full SSN or ITIN, notice of the bar date, the most recent plan or amended plan, and confirmation hearing notice and shall file a certificate of service **that complies with S.D.Ind. B-9013-2.** ~~pursuant to S.D. Ind. B-9013-2.~~ If the Debtor asserts that no notice is required, the Debtor shall file a statement in lieu of notice. A sample form is available on the Court's website.

### **(c) Amendments to Social Security Number or Individual Taxpayer Identification Number: Notice Requirements**

If a SSN or ITIN is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect SSN or ITIN, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

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- (3) The Debtor shall ~~serve~~ **distribute** notice of the corrected SSN or ITIN ~~on~~ **to** all creditors, trustee, and the UST.
- (4) The Debtor shall file a certificate of service **that complies with S.D.Ind. B-9013-2.** ~~pursuant to S.D. Ind. B-9013-2.~~

### **(d) Amendments Changing Debtor's Name: Notice Requirements**

If the Debtor's name is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect Debtor name, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

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- (3) The Debtor shall ~~serve~~ **distribute** notice of the corrected name ~~on~~ **to** all creditors, trustee, and the UST.

- (4) The Debtor shall file a certificate of service ~~that complies with S.D.Ind. B-9013-2.~~  
~~pursuant to S.D. Ind. B-9013-2.~~

Committee Comments

Edited to have uniform language about certificate of service, and to use ‘distribute’ when referring to notices.

**B-1015-1. CONSOLIDATION OR JOINT ADMINISTRATION OF CASES  
PENDING IN SAME COURT**

(a) Joint Cases

Unless otherwise ordered by the Court, a joint case commenced pursuant to 11 U.S.C. §302(a) shall be jointly administered. The separate estates of Debtors in a joint case will only be consolidated upon motion, after notice.

(b) Manner of Joint Administration

Unless otherwise ordered, jointly administered cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case”. ~~The other jointly administered cases are known as “Member Cases.”~~

(2) Caption

All papers, except for the petition, schedules, statement of financial affairs, Proofs of Claim, ~~and~~ notices of meetings of creditors pursuant to 11 U.S.C. §341, ~~plans and disclosure statements, and pleadings directly related to plans and disclosure statements~~ shall ~~be captioned under~~ ~~have the caption and case number of~~ the Lead Case ~~name and number~~ followed by the words “Jointly Administered” unless one of those cases is for an individual Debtor; then the caption shall include the Lead Case and the case name ~~and number~~ for any individual Debtor. A proof of claim shall indicate only the case name and number of the case in which the claim is asserted. The caption shall not include the word “Consolidated” ~~to refer to joint administration.~~

(3) Docket

Except for the documents listed in subparagraphs (4) and (5) below, a pleading or document filed in any of the jointly administered cases ~~A single case docket shall be maintained~~ after the entry of the order for joint administration **shall be docketed** under the case number of the Lead Case. If joint administration is terminated, documents filed after the order terminating joint administration shall be filed and docketed in the separate cases.

(4) Claims

A separate claims register shall be maintained for each case. Claims shall be filed only in the name and case number of the Debtor against which the claim is asserted. A separate claim must be filed in each jointly administered case in which a claim is asserted.

(5) Documents to be Filed in Member Cases Separately

Even if filed after the entry of the order for joint administration, the following documents shall be filed on the dockets of the Member Case as to which the document applies:

- (i) schedules, statements of financial affairs, and amendments thereto;
- (ii) In Chapter 11 cases, plans and disclosure statements and objections or other pleadings related thereto, and ballot reports.

(6) Ballots

Ballots shall be styled only in the case name and number of the Member Case for which the plan being voted on was filed.

(c) Substantive Consolidation

Unless otherwise ordered, substantively consolidated cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case”.

(2) Caption

All papers in substantively consolidated cases shall contain in the caption only the name and case number of the Lead Case, unless one of those cases is for an individual Debtor; then the caption shall include the Lead Case and the case name for any individual Debtor.

(3) Docket

A single case docket shall be maintained after the entry of the order for consolidation. If consolidation is later terminated, then documents filed after the order terminating consolidation shall be filed and docketed in the separate cases.

(4) Claims

After consolidation all claims shall be filed in the Lead Case. Any claim filed and docketed prior to the consolidation shall be considered as if filed in the substantively consolidated cases but shall remain on the claims register of the originally filed case.

Committee Comments

Several years of experience under the current rule, particularly in groups of Chapter 11 cases being jointly administered, revealed the need for some changes to how docket entries are maintained. Confusion becomes particularly acute at plan proposal and confirmation stage in such cases, and so the Committee proposes that while cases are under joint administration docket entries about plans and related pleadings be maintained separately. Clerk staff have confirmed that CM/ECF can be manipulated to allow for the proposed changes.

**B-1019-1. CONVERSION OF CHAPTER 11, CHAPTER 12, OR CHAPTER 13 CASE TO CHAPTER 7 CASE**

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(b) ~~Service~~ **Distribution** of Notice of Bar Dates and Meeting of Creditors; Certificate of Service

The Debtor shall ~~send~~ **distribute** to added creditors the following:

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(2) Unless the schedule of post-petition debts was filed and creditors were added

before issuance of the notice of the meeting of creditors under the new chapter, a copy of the notice of the meeting of creditors under the new chapter with the Debtor's full SSN or ITIN.

Debtor shall file a certificate of service as to these documents **that complies with S.D.Ind. B-9013-2.** ~~in compliance with S.D.Ind. B-9013-2.~~

#### Committee Comments

Edited to have uniform language about certificate of service, and to use 'distribute' when referring to notices.

### **B-2002-1. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, AND UNITED STATES TRUSTEE**

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#### (c) Limited Notice in Chapter 7 Cases

In Chapter 7 cases, **90 days after the first date set for the meeting of creditors or, if a report of possible assets has been filed, 90 days after the issuance of the Notice of Possible Assets** ~~after all time periods for filing proofs of claim have expired~~, all notices required by Fed.R.Bankr.P. 2002(a), except the notice of the final report and of dismissal or denial of discharge, shall be mailed only to the trustee, the UST, creditors who have filed claims and creditors, if any, who are still permitted to file claims by reason of an extension granted under Fed.R.Bankr.P. 3002(c)(1) or (2).

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#### (e) Returned and Undeliverable Mail

##### (1) Designation of Debtor as Return Addressee

The Clerk may instruct the ~~Court's noticing agent~~ **Bankruptcy Noticing Center ("BNC")** to designate the Debtor as the return addressee for orders and notices, including the notice of the commencement of the case and meeting of creditors and any order confirming a plan, dismissing a case, or discharging a Debtor.

##### (2) Duty to Provide Accurate Address

The Debtor shall file a Notice of Change of Address for any creditor or party in interest whose address appears undeliverable based either on the Debtor's receipt

of returned mail or information received from the ~~Court's noticing agent~~ BNC. In addition, the Debtor shall ~~serve~~ **distribute** the documents required by S.D.Ind. B-1009-1(b)(2) **to any creditor with a revised address**. If the Debtor is unable to determine a correct address for a creditor or party in interest, the Debtor shall file a Notice of Unavailable Address specifying the creditor's name and reporting that a correct address cannot be located. ~~Upon the filing of such a notice, the Clerk shall code the address so that no further notices or orders are sent to that creditor or party in interest.~~

(3) Returned Mail Received by the Clerk, Undeliverable Addresses Identified by Clerk's Noticing Agent and Duty to Correct

Unless otherwise ordered, the Clerk shall docket any returned **paper notices of the meeting of creditors** mail received by the Court in an open case. ~~The Clerk shall code the address for any creditor whose mail was returned or any creditor whose address is identified on the first certificate filed by the Clerk's noticing agent as undeliverable so that no further notices or orders are sent to that creditor or party in interest.~~ The Debtor shall file a Notice of Change of Address for any such creditor, if the correct address can be identified, ~~and shall~~ **serve distribute** the documents required by S.D.Ind. B-1009-1(b) **to any creditor with a revised address, and shall file a certificate of service that complies with S.D.Ind. B-9013-2. All other** returned mail received **by the Clerk** ~~in a closed case~~ shall be discarded.

Committee Comments

Edits to subparagraph (c) are proposed to make clear that limited notice applies to both asset and no-asset Chapter 7 cases.

The changes proposed for subparagraph (e) implement guidance received from the Administrative Office of United States Courts on handling mail distributed by the Bankruptcy Noticing Center. (Given the other shifts in noticing from the Clerk to parties, the phrase "Court's noticing agent" has been changed so it is clear this subparagraph concerns only the Bankruptcy Noticing Center.) Since mail may be returned in error or a 'bad' address become subject to a forwarding order or other change, preventing future notices to the address is improper. Other revisions make clear that the Court will only docket returned meeting of creditor notices - to let debtors' counsel know that the original notice sent in the case was not received. All other returned mail will not be docketed because after the initial notice the burden for maintaining an accurate address shifts to the notice recipient. Finally, the Committee recommends use of 'distribute' as to the documents required by S.D.Ind. B-1009-1(b) because those documents are mostly notices.

## **B-2003-1. NOTICE OF CONTINUED MEETING OF CREDITORS**

### **(a) Notice When Meeting Continued Before Convened.**

A Debtor's request to continue a meeting of creditors should be directed to the trustee in a Chapter 7, 12, or 13 case, and to the UST in a Chapter 11 case. The request should not be filed with the Court. The Debtor shall seek a continuance when the cause necessitating the continuance becomes known to the Debtor. When the continuance is sought before the meeting has been convened, and the trustee grants the request, the trustee shall file notice of the continued meeting date. The Debtor shall ~~send~~ **distribute** notice of the continued meeting to all creditors, parties in interest, the trustee and the UST, and shall file a certificate of service **that complies with S.D.Ind. B-9013-2.** ~~in accordance with S.D.Ind. B-9013-2.~~

If a trustee, *sua sponte*, continues a meeting before it has been convened, then the trustee shall file notice of the continued meeting date, ~~send~~ **distribute** notice of the continued meeting to all creditors, parties in interest and the UST, and shall file a certificate of service **that complies with S.D.Ind. B-9013-2.** ~~in accordance with S.D.Ind. B-9013-2.~~

### **Committee Comments**

Edited to have uniform language about certificate of service, and to use 'distribute' when referring to notices.

## **B-2014-1. EMPLOYMENT OF PROFESSIONAL PERSONS AND TREATMENT OF RETAINERS IN CHAPTER 11 CASES**

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### **(b) Employment Applications in Chapter 11 Cases**

#### **(i) Service of Notice and Hearing**

The Employment Application (including supporting affidavit or verified statement of the Professional and any supplemental affidavit) shall be served on the Service List. Notice of the Employment Application, an objection deadline, and any hearing shall be ~~served on~~ **distributed to** the Notice List. Any creditor or other party in interest who wishes to resist the Employment Application must, on or before the objection deadline provided in the notice, file an objection and serve such objection upon the Applicant, the Professional, and the Service List. If no objection is filed by the objection deadline the Court may grant the Employment



Application and approve the proposed employment without a hearing or further notice. If the Employment Application is granted the employment shall be effective as of the date the Employment Application was filed unless otherwise ordered by the Court.

(ii) Conflicts

If a Professional seeks to resolve any potential conflict of interest concerning any other client or former client, the Professional shall comply with applicable Rules of Professional Conduct. All consents or waivers of conflicts of interest (“waivers”) shall be in writing. The Professional shall serve copies of all such waivers upon the Applicant and the Service List with the Employment Application or promptly following receipt by the Professional of a waiver.

(iii) Disclosure of Compensation and Retainers

As part of the Employment Application, a Debtor and a proposed Professional shall obtain approval from the Court of an arrangement whereby a retainer paid by the Debtor to the Professional may be retained and applied to the satisfaction of such Professional’s fees and expenses. Those financial arrangements may include provisions similar to the following:

- (1A) The retainer shall be applied to satisfy the Professional’s fees and expenses as they are approved by the Court pursuant to 11 U.S.C. §§330 and 331;
- (2B) The Professional may hold the entire retainer without any application for payment of fees and expenses until final approval by the Court of such Professional’s final application for fees and expenses, with such allowed interim fees and expenses paid periodically from other estate assets;
- (3C) Pursuant to subparagraph (e) (b)(4)(iv) of this Rule, the Professional may draw against the retainer at specified intervals prior to the award of fees and expenses by the Court; and
- (4D) Any other arrangement approved by the Court.

(iv) Periodic Payment Procedure

Subject to prior Court approval, the Professional and the Debtor may agree to a streamlined procedure for periodic payment of fees and costs prior to allowance by the Court. “Payment” includes any transfer of funds from the Debtor to the Professional after the filing date. Any proposed procedure shall provide for payment of no more than 80% of requested fees but may provide for payment of 100% of expenses.

- (1A) All such arrangements shall provide that prior to the fee draw the Professional must file with the Clerk a Notice of Draw which sets forth the amount of the proposed draw and contains, as an attachment, a copy of the periodic billing which supports the amount of the draw.
- (2B) A copy of the Notice of Draw shall be ~~served upon~~ distributed to the Service List and, in addition, a copy of the relevant periodic billing shall be delivered to the UST. Failure of a party to object to the draw does not affect the party's right to object to the final allowance of fees and expenses. Court approval of the draw procedure is not approval of fees and expenses. All fees and expenses drawn are subject to disgorgement until the Court allows the final fee application of the Professional.

#### Committee Comments

The numbering applied to this rule is not uniform with that used in other rules, so edits are proposed. When the rule was last amended, the fact that periodic payment procedures appear now in subparagraph (b)(4) rather than subparagraph (e) was not captured in subparagraph (b)(3).

### **B-2015-1. REPORT OF OPERATIONS**

(a) Monthly Operating Reports

For all Chapter 11 cases, and for Chapter 7 cases in which the trustee operates a business, and for cases under Chapters 11 and 12 in which a plan is not confirmed, the trustee or the Debtor shall file a monthly reports of operations, at intervals to be determined by the UST or any applicable rule, using forms approved by the UST. For all Chapter 12 cases, and for Chapter 13 cases in which the Debtor operates a business, the Debtor shall file reports of operations as required by the trustee, at intervals to be determined by the trustee or any applicable rule. For Chapter 7 and Chapter 11 cases, the report shall be in a form acceptable to the UST. For Chapter 12 and Chapter 13 cases, the report shall be in a using forms acceptable to the trustee. Reports required by this rule shall be filed no later than fourteen (14) days after the end of the reporting period.

(b) Service Distribution

The report shall be ~~served upon~~ distributed to the UST, the Debtor, any trustee and counsel for the trustee, the Service List in a Chapter 11 case, and any party requesting service of the reports.

(c) Penalties for Failure to File

The failure to file operating reports may constitute cause for the conversion or dismissal of the case, or for the appointment (or removal) of a trustee.

### Committee Comments

The Court has opted to defer to the UST (and Chapter 12 and 13 trustees) as to financial reports generally. In actual practice, reporting periods are not always monthly, particularly as to post-confirmation reports. The rule as it currently exists does not reference post-confirmation reports, which creates some confusion as to the enforcement of the UST's expectation for same - and note that Rule B-3022-1 contemplates post-confirmation reports as currently drafted. Proposed edits make clear that financial reports can be required by the UST or case trustee, or by other applicable rule, and report format is set by the UST or trustee. (Proposed edits to subparagraph (b) equate operating reports to notices, and therefore use the verb 'distribute' rather than 'serve.')

## **B-2016-1. APPLICATIONS FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES**

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### **(b) Chapter 13 Cases**

The following are guidelines for the circumstances under which the Court will, as part of the Chapter 13 plan confirmation process, approve fees of attorneys representing a Chapter 13 Debtor ("Counsel"). Counsel shall file a proof of claim both for fees awarded pursuant to these guidelines and for fees awarded after application.

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- (4) If Counsel has filed an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," but the maximum fee in (b)(2) above is not sufficient to fully compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. **The application shall be accompanied by time records supporting the additional fees or by an affidavit explaining why the standard fee is inadequate in the case.**

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- (6) If Counsel has elected to be compensated pursuant to these guidelines but the case is converted or dismissed prior to confirmation of a plan, absent contrary orders, the trustee shall pay to the Counsel, to the extent funds are available and subject to the trustee's percentage fee, an administrative claim equal to 50% of the unpaid fee balance if a properly documented fee claim (for the entire fee balance) has been filed by Counsel and served upon the trustee. Under appropriate circumstances, Counsel may file **an motion application** (within fourteen [14] days of the dismissal or conversion) for allowance and payment of additional fees. **The**

application shall be accompanied by an affidavit supporting award of the amount requested. Counsel shall not collect, receive, or demand additional fees from the Debtor for work already performed unless authorized by the Court, even after dismissal.

#### Committee Comments

Questions have arisen regarding the documentation required to support a fee higher than the standard or 'no look' fee established by the Court. This subparagraph makes clear that, when counsel elects at the outset not to use these guidelines, then the award of fees is subject to the requirements of an application with time records. Since counsel may not have time records in a case that began with the expectation that only the standard fee would be sought, the Committee proposes that the Court allow counsel to seek fees above the standard amount if supported by either time records or an affidavit.

Similar questions as to documentation arise when counsel seeks to receive from the trustee in a dismissed case more than 50% of the funds on hand. The Committee recommends that the Court require such requests to be accompanied by an affidavit. Counsel need not produce time records.

### **B-2070-1. MOTIONS FOR TURNOVER**

A Chapter 7 trustee who files a motion for turnover shall provide the debtor(s), counsel for the debtor(s), if any, and the UST notice of the motion. That notice shall give 21 days for the filing of any objection. Along with the motion, the Chapter 7 trustee shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2.

#### Committee Comments

This proposed rule shifts responsibility for noticing motions for turnover to the filing trustee.

### **B-3002.1-1 MOTIONS TO DEEM MORTGAGE CURRENT**

After all payments have been made pursuant to the confirmed plan, a Chapter 13 debtor may file a Motion to Deem Mortgage Current only as to any mortgage that is not subject to Fed.R.Bankr.P. 3002.1. The Chapter 13 debtor shall provide the mortgage lender with a notice giving the lender 21 days to file an objection. Along with the motion, the Chapter 13 debtor shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2.

#### Committee Comments

This proposed rule also shifts responsibility for noticing to the filing party.

## **B-3007-1. OBJECTIONS TO CLAIMS: NOTICE**

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### **(c) Filing; Certificate of Service**

The moving party shall file a copy of the notice and a certificate of service **that complies with S.D.Ind. B-9013-2** ~~listing the name and address of each entity served and the date and manner of service.~~ The objection, notice, and certificate of service may be combined into one document. A sample of a combined objection, notice, and certificate of service is available on the Court's website. If no proper response to the objection is filed, the Court may sustain the objection without further notice or hearing.

### **Committee Comments**

Edited to have uniform language about certificate of service. The Committee opted to stay with the concept of 'serving' an objection to a proof of claim in subparagraph (a), rather than 'distributing', in the absence of any guidance from the national rules.

## **B-3015-1. FILING **AND DISTRIBUTION** OF CHAPTER 13 PLANS**

### **(a) Form of Plan**

Chapter 13 plans and amended plans shall use the applicable Model Plan form approved by the Court. The Model Plan is available on the Court's website.

### **(b) Extension of Time to File Plan**

A motion to extend the time to file a Chapter 13 plan must be filed within fourteen (14) days after the commencement of the case.

### **(c) Distribution of Plans and Amended Plans**

**The Chapter 13 trustee appointed in the case shall distribute the original plan, the first and second amended plans and any related notice, and file a certificate of service that complies with S.D.Ind. B-9013-2. Debtors shall distribute any third amended or subsequent plan and any related notice, and file a certificate of service that complies with S.D.Ind. B-9013-2.**

### Committee Comments

The Court decided to shift responsibility for sending out plans away from the Clerk. After extensive discussions among the Chapter 13 trustees and the debtors' bar, separate and apart from Committee meetings, this recommendation emerged: Chapter 13 trustees have initial distribution responsibilities, but if a case reaches the third amended or subsequent plan, the responsibility shifts to the debtor. (The Committee does not recommend an exception for pro se debtors.) The national rules seem to treat plans as their own type of document, and do not refer to 'serving' or 'service' of plans, so the Committee chose the verb 'distribute.'

## **B-3015-2 DISTRIBUTION OF CHAPTER 12 PLANS**

The debtor in a Chapter 12 case shall distribute any plan, amended plan, or motion to modify a plan, and shall file a certificate of service that complies with S.D.Ind. B-9013-2.

### Committee Comments

After consultation with the Chapter 12 trustee, the Committee proposes that in Chapter 12 cases, just as in Chapter 11 cases, responsibility for plan distribution always rests with the debtor. (Again, the Committee does not recommend an exemption for pro se debtors.)

## **B-3015-3 FILING AND DISTRIBUTION OF PRE-CONFIRMATION AND POST-CONFIRMATION MODIFICATIONS TO CHAPTER 13 PLANS**

### **(a) Pre-Confirmation Modifications**

- (1) Agreed Modifications with Creditor: Filing and Notice. If the debtor, a creditor, and the trustee agree upon a modification to the plan before confirmation, and that modification only affects the treatment of the creditor agreeing to the change, then the parties shall file an agreement, a stipulation, or a modification not requiring notice. Notice to creditors of the modification is not required. Any such agreement will not result in a separate order, as the subsequent confirmation order will be deemed an approval of the plan as modified by agreement.
- (2) Agreed Modifications with Trustee: Filing and Notice. If the debtor and the trustee agree upon a modification to the plan before confirmation that does not adversely affect the treatment of **any** creditor, then the parties shall file an agreement, stipulation, or modification not requiring notice. Notice to creditors of the agreement is not required. Any such agreement will not result in a separate order, as the subsequent confirmation order will be deemed an approval of the

plan as modified by agreement.

- (3) Other Preconfirmation Modifications. Any preconfirmation modification that affects the treatment of creditors that have not agreed to the modification requires the filing of an amended plan which shall be distributed by the trustee or the debtor pursuant to S.D. Ind. B-3015-1.

(b) Post-Confirmation Modifications

A proposed modification of a confirmed plan shall be filed as a Motion to Modify Plan. The debtor shall distribute notice of the filing and of any hearing or deadline for objections and shall file a certificate of service that complies with S.D.Ind. B-9013-2.

Committee Comments

No previous local rule directly addressed pre-confirmation modification procedure. Local practice has developed which results in no notice of preconfirmation modifications to all creditors under some circumstances. This rule proposes to capture that practice, and makes clear that any modification affecting creditors other than by their agreement should be handled by filing an amended plan, which then gets distributed to all creditors. The rule also blesses the practice of dispensing with notice when the trustee negotiates modifications that do not negatively impact any creditor.

Most of subparagraph (a)(1) of this Rule was originally in the Rules as B-9019-1(b). The subparagraph has been edited to fit with the broader concepts now captured in this rule.

The local rules also did not address the procedure for modifying a plan post-confirmation. This rule also proposes to capture current practice **and** to shift responsibility for providing notice of the motion to modify to the debtor. The Committee encourages the Court to provide a sample notice for motions to modify.

**B-3018-1. BALLOTS; VOTING ON PLAN - CHAPTER 11**

(a) Distribution of Plan

Upon the approval or conditional approval of the disclosure statement, unless otherwise ordered by the Court, within seven (7) days the party filing the plan (the “Plan Proponent”) shall ~~serve~~ **distribute** copies of the plan, the disclosure statement (unless none is required under 11 U.S.C. § 1125(f)(1)), and ballot(s) ~~on~~ **to** all creditors and parties in interest, along with the notice of the hearing on confirmation. The Plan Proponent shall file within fourteen (14) days after the approval or conditional approval of the disclosure statement a certificate of service **that complies with S.D.Ind. B-9013-2.** ~~in compliance with S.D. Ind. B-9013-2.~~

(b) Submission of Ballots and Balloting Report

The certification and the balloting report shall be filed with the Court at least three(3) days before the confirmation hearing. Copies of the report shall be ~~served on~~ distributed to the UST. The Service List, and parties filing objections to the plan.

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(3) Filing and Service

The certification and the balloting report shall be filed with the Court at least three (3) days before the confirmation hearing. Copies of the report shall be ~~served on~~ distributed to the UST, the Service List, and parties filing objections to the plan.

Committee Comments

Edited to have uniform language about certificate of service, and to use ‘distribute’ to be consistent with the proposals for distributing Chapter 12 and 13 plans and reports.

**B-3022-1. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS NOT AN INDIVIDUAL**

After the estate has been fully administered, the Plan Proponent or other entity administering the confirmed plan shall file an application for a final decree. The application shall ~~be accompanied by a final quarterly or monthly financial report pursuant to S.D. Ind. B-2015-1~~ that includes the percentage paid or proposed to be paid to general unsecured creditors in the plan.

Committee Comments

Proposed amendments to Rule 2015-1 result in shifting responsibility for required report format to UST. Format may not include the information needed by the Court - percentage paid to unsecured creditors - to close the case. Committee recommends placing requirement for providing that percentage in the application itself.

**B-3022-2. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS AN INDIVIDUAL**

(a) ~~Report in Addition to~~ Application for Final Decree: Payments Completed

If the Debtor in a Chapter 11 case is an individual, and has completed all plan payments, then the Debtor shall file an application for final decree. ~~With~~ The application for final



~~decree, the Debtor or the Plan Proponent shall file a final quarterly or monthly financial report pursuant to S.D. Ind. B-2015-1 that includes the percentage paid to general unsecured creditors in the plan. If the Debtor is otherwise eligible, the Court shall issue a discharge as soon as practicable.~~

#### Committee Comments

Same as for B-3022-1. As to individual Chapter 11 cases, the percentage paid to unsecured creditors is only required at plan completion. Therefore, the rule need not be changed as to requests to close the case early.

### **B-4001-1. MOTIONS FOR RELIEF FROM STAY AND MOTIONS TO EXTEND OR IMPOSE THE STAY**

#### **(a) Relief from Stay or Co-debtor Stay**

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#### **(2) Notice; Disposition**

##### **(A) Chapters 7, 12, and 13**

In cases pending under any chapter except Chapter 11, notice of the motion shall be ~~served~~ **distributed** by the movant ~~on to~~ the Debtor, parties that have entered an appearance, any trustee, and the UST, except as otherwise provided by S.D.Ind. B-2002-1(c). If the motion also seeks abandonment, notice must be ~~sent~~ **distributed** to all creditors and parties in interest. The notice shall allow fourteen (14) days from the date of service to file objections. Along with the notice, the moving party shall file a copy of the motion and a certificate of service **that complies with S.D.Ind. B-9013-2** ~~listing the name and address of each entity served and the date and manner of service.~~ A sample notice is available at the Court's website. If no proper response to the motion is filed, the Court may grant relief from the stay without further notice or hearing. At any hearing on the motion the Debtor or objecting party has the burden of establishing any payment alleged to have been made but not set forth in the payment history.

##### **(B) Chapter 11**

In cases pending under Chapter 11, unless the Court has previously entered a case management order covering preparation and distribution of notices,

movant should contact the Courtroom Deputy to discuss who will prepare and ~~issue~~ **distribute** the notice and determine if a hearing is needed. Hearing date and time will be provided by the Courtroom Deputy. Notice of the motion shall be ~~served on~~ **distributed to** the Debtor, parties that have entered an appearance, any creditors committee or if no committee has been appointed, the twenty largest unsecured creditors, any trustee, and the UST. If the motion also seeks abandonment, notice must be ~~sent~~ **distributed** to all creditors and parties in interest. After distribution, the movant shall file a certificate of service **that complies with S.D.Ind. B-9013-2.** ~~in accordance with S.D.Ind. B-9013-2.~~ The certificate of service must be filed prior to any hearing the Court has set on the motion.

(b) Extend or Impose the Stay

\*\*\*\*\*

(2) Motion Filed More than Ten Days After Filing Date

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- (C) The movant shall file a certificate of service **that complies with S.D.Ind. B-9013-2** ~~establishing such notice~~ on or before the hearing date.

\*\*\*\*\*

Committee Comments

Edited to have uniform language about certificate of service, and to use the verb ‘distribute’ as to notices.

**B-4003-2. LIEN AVOIDANCE MOTIONS**

(a) Requirements: All Motions

Any Debtor seeking to avoid a lien pursuant to either 11 U.S.C. §§522(f) or 1322(b) shall file a separate written motion as to each alleged lien holder. The motion may be combined with the notice required by subparagraph (d). A sample notice and motion are available on the Court’s website. The motion shall identify:

- (1) the lien to be avoided and its **approximate** amount;

~~(2) the amount, listed separately, of all other liens on the property and a notation if any other lien is sought to be avoided or eliminated;~~

(2) the amount, listed separately, of all other liens on the property which the debtor will not seek to avoid, and a list of the liens on the property which the debtor will seek to avoid.

(3) if applicable, the amount of the impaired exemption; and

(4) the value of the subject collateral.

\*\*\*\*\*

(e) Filing and Certificate of Service

Along with the motion, the Debtor shall file with the Court a copy of the notice and a certificate of service that complies with S.D.Ind. B9013-2 in compliance with S.D.Ind. B-9013-2.

Committee Comments

In addition to a proposed edit to have uniform language about certificate of service, the Committee proposes to allow the debtor to use approximate lien amount in subparagraph (a)(1) given difficulty of determining exact amount after filing. The Committee also supports amendments to subparagraph (a)(2) - presentation in the motion of two separate lists: liens on property that won't be avoided and liens that debtor will seek to avoid. The Committee feels those disclosures may make it easier for the Court to see both the propriety of avoidance and the potential effect of avoidance.

**B-4004-1. DISCHARGE IN CHAPTER 12 INDIVIDUAL AND CHAPTER 13 CASES**

(a) Trustee's Notice of Completion

For all individual Chapter 12 cases and all chapter 13 cases filed on or after October 17, 2005, the Chapter 12 or 13 trustee shall file a Notice of Chapter 13 Plan Completion after all payments have been received. Sample forms are available on the Court's website.

(b) Debtor's Required Pleadings

Within thirty (30) days after the trustee files the notice of completion, the Debtor shall file a Motion for Entry of Chapter 13 Discharge and a Certification of Eligibility for Chapter 13 Discharge. Each debtor in a joint case shall file a separate Certification.

Sample forms are available on the Court's website.

(c) Service and Notice

The Debtor shall serve a copy of the Motion for Entry of Chapter 13 Discharge and a Certification of Eligibility for Chapter 13 Discharge on any entity to whom the Debtor owes a domestic support obligation. The Debtor shall also distribute a notice giving the entity to whom the domestic support obligation is owed and the Chapter 13 trustee 21 days from the filing of the Motion and Certification to file an objection to the entry of discharge, and shall file a certificate of service that complies with S.D.Ind. B-9013-2.

(cd) Closing and Reopening

If no motion for entry of ~~chapter 13~~ discharge is filed, the case may be closed without entry of a discharge after filing of the trustee's final report, or thirty (30) days after filing of the trustee's notice of plan completion, whichever is later. If the motion for entry of ~~chapter 13~~ discharge is filed after the case has been closed, the Debtor must also file a motion to reopen the case. A filing fee to reopen the case must be paid with the motion.

(de) Denial of Discharge

If a notice of ineligibility for discharge has been filed **in a Chapter 13 case** by an interested party or a similar notice is placed on the docket by the Court, asserting that the Debtor is not eligible for a discharge because of 11 U.S.C. §1328(f), then the Court shall not issue a discharge to the Debtor at the conclusion of the case, unless the Debtor has objected to the notice of ineligibility and the Court has determined that the notice is incorrect.

Committee Comments

The Chapter 13 trustees note the absence of an opportunity to object to a debtor's motion for entry of discharge and certification. They also note that the entity most likely to have information to refute the debtor's certification - the holder of the DSO - does not receive notice. Although notice is not required by the Code the trustees suggest that it is appropriate. The Committee endorses the trustees' proposal, although that endorsement was not unanimous. While no requirement of notice exists in the Code or the national Rules, the majority felt that Fed.R.Bankr.P. 2002(m) gives the Court authority to direct notices in addition to those required by the Rules.

The rule should also be edited to establish a procedure for discharge in individual Chapter 12 cases. The Chapter 12 trustee supports use of the Chapter 13 procedure in individual Chapter 12 cases.

## **B-5071-1. CONTINUANCES**

Unless otherwise ordered by the Court, all requests to continue a scheduled hearing, conference or trial must be made by written motion. The motion to continue shall indicate whether the opposing party consents to the continuance. If the movant has been unable to reach the opposing party, the motion shall recite what efforts were made to contact the opposing party.

### Committee Comments

The rule attempts to capture the preferred practice. The Committee decided not to recommend a deadline for filing a motion for continuance.

## **B-6004-1. PROCEDURE FOR SALE OF ASSETS OUTSIDE THE ORDINARY COURSE PURSUANT TO 11 U.S.C. §363**

[Note: this is the proposed revised rule in its entirety; changes from the original are too extensive to capture with redline and strikeout.]

### (a) Applicability of Local Rule

This rule applies to any motion to approve the sale of assets, outside the ordinary course, pursuant to 11 U.S.C. §363 (the “Motion to Sell”), including motions filed by a trustee, a debtor in Chapter 12 or 13, or a debtor-in-possession in Chapter 11.

### (b) Employment of Professionals

The movant shall file a separate application to employ any broker, auctioneer, or other professional to be retained to assist with any sale. The retention of liquidators, auctioneers, and appraisers is also governed by B-6005-1.

### (c) Motion to Sell: Contents and Additional Requirements

#### (1) Private Sale

##### (A) Generally

Any Motion to Sell by private sale shall identify:

- (i) the property to be sold,
- (ii) the prospective purchaser (“Prospective Purchaser”);

- (iii) the sales price and an estimate of the net proceeds to be received by the estate (including a deduction for any exemption);
  - (iv) a brief summary of all material contingencies to the sale, together with a copy of the agreement, if available;
  - (v) a description of the manner in which the property was marketed for sale, and a description of any other offers to purchase;
  - (vi) a description of any known relationships between the Prospective Purchaser and its insiders and the Debtor and its insiders or the trustee; and
  - (vii) a disclosure if the property to be sold contains personally identifiable information and, if so, the measures that will be taken to comply with 11 U.S.C. §363(b)(1).
- (B) Additional Requirements in Chapter 11 Cases. Any Motion to Sell in a Chapter 11 case that proposes the sale of all or substantially all of the Debtor's assets shall include, in addition to the requirements in subparagraph (c)(1), the following:
- (i) If schedules have not been filed by the Debtor, a summary of the Debtor's debt structure, including the amount of the Debtor's secured debt, priority claims, and general unsecured claims;
  - (ii) A statement setting forth any relationship or connection the Debtor (including its insiders) will have with the Prospective Purchaser after the consummation of the sale, assuming it is approved; and
  - (iii) If a creditors' committee, or its equivalent, existed pre-petition, the identity of the members of the committee and the companies with which they are affiliated and the identity of any counsel.

(2) Private Sale by Agent in Business of Selling Similar Property

If the trustee or debtor-in-possession employs an agent to sell estate property that is in the business of selling such property in a 'commercially reasonable manner' that would satisfy Indiana Code §26-1-9.1-610, then the Motion to Sell shall include information to support the determination that the agent is in the business of selling similar property in a commercially reasonable manner. If the information regarding the agent is provided in the Motion to Sell, then the Motion need not provide the information required by (c)(1)(A)(ii) through (vi) or

(c)(1)(B)(ii) in the Motion to Sell, but shall provide that information in the report of sale.

(3) Auction

Any Motion to Sell by auction shall identify the auctioneer, and the date, time and place of the auction. If the auction will use bid procedures not approved by the Court as part of an order authorizing the retention of an auctioneer, then the movant shall also comply with subparagraph (e) below.

(4) Sale with Prospective Purchaser Identified but Bids Considered

Any Motion to Sell that identifies a Prospective Purchaser but provides for consideration of additional bids shall comply with subparagraph (c)(1). Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. The request shall also disclose the identities of any other entity that expressed to the movant an interest in the purchase of all or a material portion of the assets to be sold within ninety (90) days prior to the filing of the sale motion, the offers made by them (if any), and the nature of the offer. If the sale will use bid procedures not approved by the Court as part of an order authorizing retention of an auctioneer, then the movant shall also comply with subparagraph (e) below.

(d) Notice

(1) Generally

Unless otherwise ordered by the Court, the movant shall distribute notice of any hearing or of any deadline to object to a Motion to Sell or a Motion for Bid Procedures, and shall file a certificate of service that complies with S.D.Ind. B-9013-2. A motion, notice, and certificate of service may be combined into one document. A sample combined motion to sell, notice and certificate of service is available on the Court's website.

(2) Chapter 7, 12 and 13 Cases

In a Chapter 7, Chapter 12, or Chapter 13 case, the movant shall distribute notice that provides 21 days for objections to be filed. If the movant anticipates objections, the movant may contact the Courtroom Deputy and obtain a hearing date prior to sending the notice.

(3) Chapter 11 Case

In a Chapter 11 case, the movant shall contact the Courtroom Deputy to obtain a hearing date prior to filing the motion. The Court at its discretion may direct that the movant distribute notice providing 21 days for objections to be filed.

(e) Bid Procedures: Motion and Notice

(1) Motion for Bid Procedures

If the Motion to Sell contemplates use of bid procedures not approved by the Court as part of an order authorizing retention of an auctioneer, then the movant shall file separately a motion to establish bid procedures (“Motion for Bid Procedures”) on the same day as the Motion to Sell.

(2) Notice

The notice for the hearing on, or the opportunity to object to, a Motion for Bid Procedures must describe the proposed bidding procedures. If a proposed purchase agreement exists, the moving party shall describe the terms of the sale proposed, when a copy of the actual agreement will be available, and from whom it may be obtained.

(3) Post-Sale Procedures

If a sale with bid procedures approved by the Court under subparagraph (d)(1) of this rule results in a sale to a party other than the identified Prospective Purchaser, then the movant shall file a Motion to Approve Sale Pursuant to Bid Procedures. That motion shall identify the successful purchaser and the change in terms resulting from the use of the bid procedures. The motion shall include any request for approval of a topping or breakup fee. If no such fee is proposed, the Court may approve the motion without hearing. If a topping or breakup fee is proposed, the Court will issue notice and opportunity to object or will set the motion for hearing.

(f) Report of Sale

After a private sale approved by the Court under subparagraph (c)(1) or (2) has been completed, the movant shall file a report of sale pursuant to Fed.R.Bankr.P. 6004(f)(1). Unless otherwise ordered by the Court, after an auction the auctioneer shall file the report.

(g) Compensation of Professionals



After the sale has been completed, unless otherwise ordered by the Court, the movant shall file a separate application to award or approve compensation and reimbursement of expenses for that professional. No payment shall be made to the professional until the Court has entered an order on the application.

### Committee Comments

The current version of 6004-1 originally applied only to Chapter 11 cases. Then coverage was expanded to include sales under all Chapters. Significant procedural problems have arisen. The Committee proposes that the rule be revamped to provide clear guidance to trustees and debtors-in-possession seeking court approval of sales.

Some of the proposed changes include: dropped references to service and notice; dropped subparagraphs on hearing on motion for bid procedures, eliminated desired 30-day lag between approval of bid procedures and sale; dropped subparagraph on objections to the motion for bid procedures; dropped subparagraph on financial ability to close - which can certainly be raised by other parties. These changes will require at least one new event - Motion for Bid Procedures - and some confusion with normal auction sale events may arise.

The Committee proposes a new type of sale, the Private Sale by Agent in Business of Selling Similar Property. Frequently a Chapter 7 trustee has personal property to sell, typically an automobile, and determines that the highest value can be obtained by placing the vehicle with a dealer rather than sending it to auction. Trustees need the flexibility to get Court approval of the sale before knowing the purchaser, and to be able to close the sale without returning to the Court for additional approval.

Subparagraph (f) on Report of Sale does not propose to accommodate some parties' desire for an 'order' after the sale. Since the terms of sale are not supposed to change after approval - except as provided with bid procedures - no order is needed.

Subparagraph (g) spells out the need for separate applications to compensate professionals. These need to be filed separately so the Clerk can track compensation as required by Fed.R.Bankr.P. 2013. No tracking is required of topping or break-up fees.

## **B-6007-1. ABANDONMENT OF PROPERTY**

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### **(b) Trustee's Notice of Abandonment**

In Chapter 7 cases where the trustee files a notice of abandonment more than one day after filing a notice of possible assets, the trustee shall ~~serve~~ **distribute** the notice ~~on~~ **to**

parties in interest and all creditors, except as otherwise provided in S.D.Ind. B-2002-1(b). The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the notice, the trustee shall file a certificate of service **that complies with S.D.Ind. B-9013-2.** ~~in compliance with S.D.Ind. B-9013-2.~~ A sample notice is available on the Court's website.

(c) Motion to Abandon Filed by Party in Interest

A motion to abandon filed by a party in interest shall be served on the Debtor and parties in interest. Notice of the motion shall be ~~served on~~ **distributed to** the Debtor, parties in interest, and all creditors, except as otherwise provided by S.D.Ind. B-2002-1(b). The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the motion, the moving party shall file a copy of the notice and a certificate of service **that complies with S.D.Ind. 9013-2.** ~~in compliance with S.D.Ind. B-9013-2.~~ A sample notice is available on the Court's website.

Committee Comments

Edited to have uniform language about certificate of service and to use the verb 'distribute' as to notices.

**B-6008-1. REDEMPTION OF PROPERTY**

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(b) Filing and Certificate of Service

Along with the motion, the Debtor must file with the Court a copy of the notice and a certificate of service **that complies with S.D.Ind. 9013-2.** ~~in compliance with S.D.Ind. B-9013-2.~~

Committee Comments

Edited to have uniform language about certificate of service.

**B-7005-2. FILING OF DISCOVERY MATERIALS**

~~S.D.Ind. L.R. 26-2 applies in adversary proceedings, unless otherwise ordered by the Court.~~

**Discovery materials (whether discovery requests, responses, or deposition transcripts) may not be filed with the court except in the following circumstances:**

- (a) Relevant to Certain Motions. A party seeking relief under Fed. R. Civ. P. 26(c) or 37, or by way of a pretrial motion that could result in a final order on an issue, must file with the motion those parts of the discovery materials relevant to the motion.
- (b) For Anticipated Use at Trial. When a party can reasonably anticipate using discovery materials at trial, the party must file the relevant portions at the start of the trial.
- (c) Materials Necessary for Appeal. A party seeking for purposes of appeal to supplement the record with discovery materials not previously filed may do so by stipulation of the parties or by court order approving the filing.

#### Committee Comments

The Committee recommends repeating the pertinent language from the District Court's rule on filing of discovery materials, rather than cross-referencing to that rule. This proposed text is current District Court Rule 26-2.

### **B-7006-1. EXTENSIONS OF TIME**

#### (a) Initial Extensions

In every adversary proceeding pending in this Court in which a party wishes to obtain an initial extension of time not exceeding ~~thirty (30)~~ **twenty-eight (28)** days within which to file a responsive pleading or a response to a written request for discovery or request for admission, or response to a motion, the party shall contact counsel for the opposing party, or if the opposing party is not represented by counsel, the opposing party, and solicit that person's agreement to the extension. In the event that person does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall file a notice with the Court reciting the lack of objection to the extension or the fact that the person could not with due diligence be reached. The notice shall state the original due date and the date to which the time is extended. No further filings with the Court nor action by the Court shall be required for the extension.

#### Committee Comments

Although it is not required that local rules follow the 7/14/21/28-day formula for time calculation, the Committee supports changing the deadline in this rule to 28 days as that deadline is more common than 30 days.

## **B-7007-1. FRBP 7012 MOTION PRACTICE**

~~S.D.Ind. L.R. 7-1(a), (b) and (c), concerning motions under Fed.R.Civ.P. 12, applies in adversary proceedings, unless otherwise ordered by the Court.~~

**DELETED**

### Committee Comments

This rule requires filing of a brief in support of any motion to dismiss an adversary proceeding. The Judges have developed their own procedures for handling such motions, and therefore a local rule is no longer appropriate.

## **B-7026-2. FORM OF CERTAIN DISCOVERY DOCUMENTS**

~~S.D.Ind. L.R. 26-1 applies in adversary proceedings, unless otherwise ordered by the Court.~~

- (a) Form of Discovery Requests. A party propounding written discovery under Fed. R. Civ. P. 33, 34, or 36 must number each interrogatory or request sequentially and supply the written discovery to the responding party in an editable word processing format.
- (b) Form of Discovery Responses. A party responding (by answer or objection) to written discovery must fully quote each interrogatory or request immediately before each response and number each response to correspond with the interrogatory or request.

### Committee Comments

This proposed rule repeats the text of District Court Rule 26-2 as of January 1, 2012, except that the Committee recommends requiring delivery of discovery requests in an editable word processing format.

## **B-7027-1. DEPOSITIONS, REQUESTS FOR ADMISSIONS, AND EXAMINATIONS IN ADVERSARY PROCEEDINGS**

~~S.D.Ind. L.R. 30-1, 36-1, and 37-1 apply in adversary proceedings, unless otherwise ordered by the Court.~~

**DELETED**

### Committee Comments

District Court Rule 30-1 concerns the conduct of depositions; 36-1 concerns requests for

admissions; and 37-1 concerns discovery disputes. The Committee recommends that each of these rules be incorporated in the Bankruptcy Local Rules - and they are in this set at 7030-1, 7036-1, and 7037-1, respectively.

## **B-7030-1. CONDUCT OF DEPOSITIONS**

### **(a) Questions About an Asserted Privilege**

An attorney may question a deponent who refuses to answer a question on the basis of privilege about information related to the appropriateness of the privilege, including whether:

- (1) the privilege applies under the circumstances;
- (2) the privilege has been waived; and
- (3) circumstances exist to overcome a claim of qualified privilege.

### **(b) Private Conference Regarding a Pending Question**

A deponent's attorney may not initiate a private conference with the deponent during the deposition about a pending question except to determine whether to assert a claim of privilege.

### **(c) Raising Objections with the Court.**

A party may recess a deposition to submit an objection by phone to a judicial officer if the objection:

- (1) could cause the deposition to be terminated; and
- (2) can be resolved without submitting written materials to the court.

### **(d) Scheduling Depositions**

Attorneys will make a good faith effort to schedule depositions in a manner that avoids scheduling conflicts. Unless agreed by counsel or otherwise ordered by the court, no deposition will be scheduled on less than 14 days' notice.

### **Committee Comments**

This Rule is from District Court, and previously applied to bankruptcy matters, but the Committee recommends that it be set out separately, as part of effort to minimize need to cross-reference to District's local rules. Committee proposes dropping reference to Seventh Circuit Standards for Professional Conduct, found in District's subparagraph (d), as those Standards are guidelines only and including reference requires attorneys to seek out another source for information.

## **B-7036-1. REQUESTS FOR ADMISSIONS**

No party may serve on any other party more than 25 requests for admission without leave of court. Requests relating to the authenticity or genuineness of documents are not subject to this limitation. Any party desiring to serve additional requests for admission must file a written motion setting forth the proposed additional requests for admission and the reason(s) for their use.

### Committee Comments

See the comments for 7030-1.

## **B-7037-1. DISCOVERY DISPUTES**

### (a) Required Actions Prior to Court Involvement.

Prior to involving the court in any discovery dispute, including disputes involving depositions, counsel must confer in a good faith attempt to resolve the dispute. If any such dispute cannot be resolved in this manner, counsel are encouraged to contact the chambers of the assigned Judge to determine whether the Judge is available to resolve the discovery dispute by way of a telephone conference or other proceeding prior to counsel filing a formal discovery motion. When the dispute involves an objection raised during a deposition that threatens to prevent completion of the deposition, any party may recess the deposition to contact the Judge's chambers.

### (b) Requirements of Motion to Compel.

In the event that the discovery dispute is not resolved at the conference, counsel may file a motion to compel or other motion raising the dispute. Any motion raising a discovery dispute must contain a statement setting forth the efforts taken to resolve the dispute, including the date, time, and place of any discovery conference and the names of all participating parties. The court may deny any motion raising a discovery dispute that does not contain such a statement.

### (c) Pro Se Parties.

Discovery disputes involving pro se parties are not subject to this rule.

### Committee Comments

See the Comments for 7030-1.

## **B-7041-1. DISMISSAL FOR FAILURE TO PROSECUTE**

~~S.D.Ind. L.R. 41-1 applies to adversary proceedings.~~

The court may dismiss an adversary proceeding if:

- (a) the plaintiff has not taken any action for 6 months;
- (b) the Judge assigned to the case or the Clerk has given notice to the parties that the case will be dismissed for failure to prosecute it; and
- (c) at least 28 days have passed since the notice was given.

### Committee Comments

This proposed rule incorporates the text of District Rule 41-1, with a change from ‘judicial officer’ to Judge in (b). counterpart, but only in form.

## **B-7055-1. DEFAULT**

### ~~(a) Motions Required~~

~~Notwithstanding Fed.R.Bankr.P. 7055, a party seeking the entry of a default judgment shall file a motion that shall be considered by the Judge. If an entry for default judgment is presented to the Clerk, the Clerk shall not, unless otherwise ordered by the Judge, enter the default judgment but shall direct the judgment to the Judge for entry.~~

### ~~(b) Proof of Service and Affidavit~~

~~A motion for default judgment must be accompanied by proof of service and an affidavit stating that the defendant(s) is not protected by the Servicemembers Civil Relief Act, P.L. 108-189, and is not an infant or incompetent person.~~

### ~~(c) Determining Amount of Judgment~~

~~If the claim to which no response was made is for a “sum certain,” then the motion shall be accompanied by affidavit showing the principal amount due and owing, not exceeding the amount sought in the claim, plus interest, if any computed by the movant, with credit for all payments received to date clearly set forth, and costs, if any, pursuant to 28 U.S.C. §1920. If the amount of the claim is not readily ascertainable or if the amount requested in the motion exceeds the amount stated in the claim, the Court may conduct a hearing on the motion for default judgment.~~

### (a) Application for Entry of Default

A party seeking an entry of default from the clerk pursuant to Fed.R.Bankr.P. 7055(a) must file an application seeking such relief. Such application must be accompanied by an affidavit indicating that the defendant(s) has failed to plead or otherwise defend and that the defendant(s) is not protected by the Servicemembers Civil Relief Act of 2003 and is not a minor or incompetent person.

(b) Motions for Default Judgment

Notwithstanding Fed.R.Bankr.P. 7055(b)(1), a party seeking a default judgment shall present a motion to the Judge, rather than to the Clerk, ~~and such motion shall be accompanied by proof of service~~. If the claim to which no response was made is for a “sum certain,” then the motion shall be accompanied by an affidavit showing the principal amount due and owing, not exceeding the amount sought in the claim, plus interest, if any computed by the movant, with credit for all payments received to date clearly set forth, and costs, if any, pursuant to 28 U.S.C. §1920. If the amount of the claim is not readily ascertainable or if the amount requested in the motion exceeds the amount stated in the claim, the Court may conduct a hearing on the motion for default judgment.

(c) Certificate of Service

Both the application for entry of default and motion for default judgment must be accompanied by a certificate of service that complies with S.D.Ind. B-9013-2..

Committee Comments

This rule if adopted would clarify that entry of a default judgment requires a two-step process. First, the plaintiff must seek an entry of default from the Clerk by filing an application and supporting affidavit. Second, the plaintiff must file a motion for default judgment. The rule continues past practice by requiring that all motions for default judgment be directed to the Court and eliminates the distinction made by Fed.R.Bankr.P. 7055 between judgments for a sum certain and those that require computation.

**B-7056-1. SUMMARY JUDGMENT PROCEDURE**

~~S.D.Ind. L.R. 56-1 applies to adversary proceedings.~~

(a) Movant’s Obligations

A party seeking summary judgment must file and serve a supporting brief and any evidence (that is not already in the record) that the party relies on to support the motion. The brief must include a section labeled “Statement of Material Facts Not in Dispute” containing the facts:



- (1) that are potentially determinative of the motion; and
- (2) as to which the movant contends there is no genuine issue.

(b) Non-Movant's Obligations

A party opposing a summary judgment motion must, within 28 days after the movant serves the motion, file and serve a response brief and any evidence (that is not already in the record) that the party relies on to oppose the motion. The response must include a section labeled "Statement of Material Facts in Dispute" that identifies the potentially determinative facts and factual disputes that the party contends demonstrate a dispute of fact precluding summary judgment.

(c) Reply

The movant may file and serve a reply brief within 14 days after a response is served.

(d) Surreply

A party opposing a summary judgment motion may file a surreply brief only if the movant cites new evidence in the reply or objects to the admissibility of the evidence cited in the response. The surreply must be filed and served within 7 days after the movant serves the reply and must be limited to the new evidence and objections.

(e) Citations to Supporting Facts

A party must support each fact the party asserts in a brief with a citation to a discovery response, a deposition, an affidavit, or other admissible evidence. The evidence must be in the record or in an appendix to the brief. The citation must refer to a page or paragraph number or otherwise similarly specify where the relevant information can be found in the supporting evidence.

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~~(f) Court's Assumptions About Facts. In deciding a summary judgment motion, the court will assume that:~~

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~~(1) the facts as claimed and supported by admissible evidence by the movant are admitted without controversy except to the extent that:~~

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~~(A) the non-movant specifically controverts the facts in that party's "Statement of Material Facts in Dispute" with admissible evidence; or~~

---

~~(B) it is shown that the movant's facts are not supported by admissible evidence; or~~

---

~~(C) the facts, alone or in conjunction with other admissible evidence, allow the court to draw reasonable inferences in~~

~~the non-movant's favor sufficient to preclude summary judgment.~~

~~(2) facts that a non-movant asserts are true to the extent admissible evidence supports them.~~

~~(g) Stipulation to Facts. The parties may stipulate to facts in the summary judgment process, and may state that their stipulations are entered only for the purpose of the motion for summary judgment and are not intended to be otherwise binding.~~

~~(h) No Duty to Search Record. The court has no duty to search or consider any part of the record not specifically cited in the manner described in subdivision (c).~~

~~(i) Collateral Motions. The court disfavors collateral motions—such as motions to strike—in the summary judgment process. Parties should address disputes over the admissibility or effect of evidence in their briefs.~~

**(f) Oral Argument or Hearing**

Unless a party has requested a hearing, the court ~~will~~ **may** decide summary judgment motions without oral argument or hearing ~~unless the court otherwise directs or grants a request under S.D. Ind. L.R. 7-5.~~

**(g) Notice Requirement for *Pro Se* Cases**

A party seeking summary judgment against an unrepresented party must serve that party with a notice that:

- (1) briefly and plainly states that a fact stated in the moving party's Statement of Material Facts and supported by admissible evidence will be accepted by the court as true unless the opposing party cites specific admissible evidence contradicting that statement of material fact; and
- (2) sets forth the full text of Fed.R.Civ.P. 56 and this rule; and
- (3) otherwise complies with applicable case law regarding required notice to pro se litigants opposing summary judgment motions.

**(h) Compliance**

The court may, in the interest of justice or for good cause, excuse failure to comply strictly with this rule.

**Committee Comments**

For ease of reference, the District Court rule on summary judgment is shown. The Committee recommends that the stricken subparagraphs not be adopted by the Bankruptcy Judges.

## **B-7065-2. MOTIONS FOR PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS**

~~S.D.Ind. L.R. 65-2 applies to adversary proceedings.~~

(a) Adversary Proceeding Required

Prior to submitting a motion for a temporary restraining order or for a preliminary injunction, an adversary proceeding shall be initiated by the filing of a complaint pursuant to Fed.R.Bankr.P. 7001(7).

(b) Motion for Temporary Restraining Order or for Preliminary Injunction

A motion for a temporary restraining order or for preliminary injunction shall be made by a document separate from the complaint and shall be accompanied by:

- (1) a separate memorandum in support of the motion;
- (2) a declaration or affidavit by the movant or counsel for the movant showing compliance with Fed.R.Bankr.P. 7065 regarding notice to opposing parties;
- (3) a copy of the filed complaint.

(c) Proposed Order

Along with the motion for temporary restraining order or preliminary injunction, the movant shall upload an appropriate proposed order.

### Committee Comments

As to preliminary injunctions and temporary restraining orders, the Committee recommends that the Court adopt this rule rather than the District Court version. The rule spells out the procedure to be followed when requesting this equitable relief.

## **B-9006-1. PROCEDURE FOR OBTAINING SHORTENED AND/OR LIMITED NOTICE OF NON-FIRST DAY MOTIONS**

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(d) Service and Distribution of 9006(c) Request, Underlying Motion and Order Shortening Notice and/or Setting Expedited Hearing

(1) General Requirements

The movant shall serve, by fax, e-mail or hand delivery, the 9006(c) Request and the Underlying Motion, along with the Order Shortening Notice and/or Setting Expedited Hearing, on the Service List, any party that has, or claims to have, an

interest in the property to be affected by the relief requested in the Underlying Motion, parties required to receive notice under the applicable Federal Rule of Bankruptcy Procedure, and any other party as directed by the Court. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with instructions for obtaining all documents on the movant's website or by e-mail. If the matter is a contested matter within an adversary proceeding, service of the 9006(c) Request and the Underlying Motion shall be made in the manner described above but only upon the parties to the adversary proceeding and any other party as directed by the Court.

(2) Permissibility of Service by Overnight Delivery

Service by overnight delivery is acceptable if sent at least 48 hours before any deadline or hearing in the notice.

(e) Certificate of ~~Service~~ Notice

Prior to the hearing on, or the deadline for filing objections to, the Underlying Motion, the movant shall file a certificate of ~~service that complies with S.D.Ind. 9013-2.~~ notice, certifying that copies of the 9006(c) Request, Underlying Motion and Order Setting Emergency Hearing and/or Expedited Notice were sent to all parties required to receive notice. ~~The certificate of notice shall have attached as an exhibit to it a list of the parties to whom such copies were sent, at what address, and in what manner.~~

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Committee Comments

Besides an edit to have uniform language about certificate of service, the Committee recommends amendment to allow service by overnight delivery when that delivery will provide sufficient notice.

**B-9013-3. FIRST DAY MOTIONS IN CHAPTER 11 CASES**

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(d) Service of First Day Motions and Notice

The Debtor shall serve copies of all First Day Motions and notice of the hearing on the initial Service List, known counsel for any party, and named respondents. Notice of the hearing and copies of the First Day Motions shall be served by fax, e-mail, or hand delivery. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with a statement as to the total number of pages in the document and instructions for obtaining all documents on the movant's website or by e-mail. Prior to the hearing, the Debtor shall file a certificate of service **that complies with**

~~S.D.Ind. 9013-2. in compliance with S.D.Ind. B-9013-2.~~ Failure to give timely notice may result in relief being denied or the hearing continued.

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Committee Comments

Edited to have uniform language about certificate of service.

**B-9014-1. APPLICABILITY OF ~~OTHER COURT~~ ADVERSARY PROCEEDING RULES TO CONTESTED MATTERS**

Unless otherwise ordered by the Court, the following ~~District Court~~ adversary proceeding rules apply in contested matters other than motions to dismiss or convert a case:

~~7-1—Motion practice, length, form, and schedule of briefs~~

~~26-1—Form of certain discovery documents~~

7026-1            Discovery Disclosures and Conferences

7026-2            Filing of Discovery Materials

~~30-1—Conduct of depositions~~

7030-1            Depositions

~~36-1—Request for admissions~~

7036-1            Requests for Admissions

~~37-1—Discovery disputes~~

7037-1            Discovery Disputes

7041-1            Dismissal for Failure to Prosecute

7056-1            Summary Judgment procedures

Committee Comments

Proposed edits mostly reflect changes in District Court rule numbering, but the Committee does suggest that the Court add local rules on dismissal for failure to prosecute and on summary judgment to the set that applies to both adversary proceedings and contested matters.

## **B-9019-1. STIPULATIONS AND SETTLEMENTS**

### **(a) Notice to Court When Hearing Set**

#### **(1) When a Hearing Has Been Set**

When parties reach a settlement in a matter that has been set for hearing, the parties shall promptly advise the Court of the settlement and, within the time promised or as required by the Court, shall file the appropriate pleadings and any proposed order concerning the settlement. The Court may extend the time for filing upon request. Failure to file the settlement pleading may result in dismissal of the matter at issue.

#### **(2) Objection Deadline**

When approval of a settlement or compromise is required by Fed.R.Bankr.P. 9019, the parties to the agreement shall file a motion to approve the settlement in the bankruptcy case. Notice of the proposed settlement shall be served on creditors, any trustee, and the UST in accordance with Fed.R.Bankr.P. 2002 and to any other entity as the Court may direct. The notice shall allow twenty-one (21) days from the date of service to file objections to the settlement.

#### **(3) Filing; Certificate of Service**

The moving party shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2. The motion, notice, and certificate of service may be combined into one document. (A sample combination motion, notice, and certificate of service is available on the Court's website). If no proper objection is filed, the Court may approve the settlement without further notice or hearing.

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### ~~**(b) Agreements Changing Chapter 13 Plan Terms Pre-Confirmation.**~~

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~~Any agreement between the Debtor and the trustee or a creditor that changes the terms of the plan pre-confirmation, whether filed as an agreed entry, stipulation, or immaterial modification, will not result in a separate order, as the subsequent confirmation order will be deemed an approval of the plan as modified by the agreement.~~

### ~~**(c)**~~**(b) Adversary Proceedings**

#### **(1) Generally**

Except as set forth in (3) of this section, if an adversary proceeding is settled before an answer has been filed, the parties may file a stipulation of dismissal. No Court order is entered on that stipulation. However, if the agreement of the parties resulting in dismissal contains conditions precedent or subsequent, then the parties shall file an agreed judgment. The Court shall enter a separate order on

that judgment, after notice, if required.

(2) Settlements Under Fed.R.Bankr.P. 9019(a) or (b)

When approval of a settlement or compromise is required by Fed.R.Bankr.P. 9019(a) or (b), the trustee or ~~Debtor~~ **debtor-in-possession** shall file a motion to approve the settlement in the bankruptcy case and, ~~unless otherwise ordered, the Clerk shall issue~~ **serve** notice. **The trustee or Debtor debtor-in-possession shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2.** Once the motion is granted, the parties to the adversary proceeding shall then dismiss the adversary proceeding or file an agreed judgment so that the adversary may be closed.

(3) Settlements of Complaints to Deny or Revoke Discharge

Settlements of complaints to deny or revoke discharge are governed by S.D. Ind. B-7041-2.

Committee Comments

The rule would be amended to shift responsibility for providing notice of a proposed settlement, when required, to the movant. Original subparagraph (b) has been moved to new Local Rule B-3015-2. Other proposed edits are for clarity.

## **B-9070-1. DISPOSITION OF EXHIBITS**

~~S.D.Ind. L.R. 79-1 applies to exhibits submitted in adversary proceedings and contested matters.~~

(a) Custody During Pendency of Action

**Any item offered into evidence in a case will be placed in the Clerk's custody. Unless the court orders otherwise, these items may not be claimed from the Clerk until the case is disposed of as to all issues, including appeals.**

(b) Claiming Items After Disposition of Action

**The party that offered the items into evidence must claim them from the Clerk:**

- (1) **if the case is not appealed, within 90 days after the case is disposed of as to all issues;**
- (2) **if the case is appealed, within 28 days after the mandate of the reviewing court is filed in the Clerk's office and the case is disposed of as to all issues, unless otherwise ordered.**

(c) Procedure for Claiming Items

No motion or order is necessary to claim the items. The party withdrawing them must give the Clerk a detailed receipt when the items are withdrawn. The Clerk must file the receipt in the cause.

(d) Failure to Claim Items

If the parties fail to claim the items within the deadline in subdivision (b), the Clerk may dispose of them in any manner directed by the court.

(e) Withdrawal of Original Records and Papers

No one may withdraw an original pleading, paper, record, model or exhibit from the Clerk's custody except as provided by this rule or by court order.

Committee Comments

The proposed rule repeats District Court Rule 79-1, but without paragraphs concerning contraband and involvement of U.S. Marshal in disposition. Also drops reference to sale of exhibits.