

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA

**PROPOSED AMENDMENTS TO  
LOCAL RULES:  
PUBLIC COMMENT PERIOD**

The Court is proposing various amendments to its local rules. Many of the changes are technical, and the reasons for the proposed edits appear in the Comments provided by the Local Rules Committee. Substantive changes include:

- Elimination of the local “order in no asset case” process. See the proposed edits to B-6007-1.
- Placement of responsibility for noticing applications to employ in Chapter 11 cases on the entity seeking approval of the employment. See the proposed edits to B-2014-1.
- Additional required content in motions to sell – specifically, the names of lien or interest holders when the sale is proposed to be free and clear of liens. See the proposed edits to B-6004-2 through B-6004-5.
- Clarification of the process for a sale with prospective purchaser identified but bids to be considered. See the proposed edits to B-6004-3.

The proposals are attached. The Judges reserve the right to make additional changes before final adoption.

Comments to the proposed rule can be made by sending an email to [Local\\_Rules\\_Comments@insb.uscourts.gov](mailto:Local_Rules_Comments@insb.uscourts.gov) . Deadline for comments is Wednesday, June 1, 2016.

May 4, 2016

/s/ Kevin P. Dempsey  
Clerk

## Spring 2016 Edits

### **B-1000-1. ABBREVIATIONS AND DEFINITIONS**

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#### (b) Definitions Applicable to All Rules

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- (5) Non-electronically in reference to filing means delivery of documents on paper, and includes CDs, ~~and~~ diskettes, **DVDs, flash drives or other acceptable media.**

#### Comments

Amended to conform to the proposed change to B-1007-1.

### **B-1002-1. FILING REQUIREMENTS TO COMMENCE A VOLUNTARY CASE**

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#### (b) Emergency Filing; Minimum Required

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- (4) Uploaded creditor information necessary to provide proper notice to all scheduled creditors or, if filed non-electronically, the CD, ~~or~~ diskette, **DVD, flash drive or other acceptable medium** required by S.D.Ind. B-1007-1(b); and

#### Comments

Amended to conform to the proposed change to B-1007-1.

### **B-1007-1. LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS**

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#### (b) Providing Creditor Information for Cases Filed Non-Electronically

All cases and any amendment that adds creditors, filed non-electronically, must be accompanied by a CD, ~~or~~ diskette, **DVD, flash drive or other acceptable medium** listing the complete names and addresses of the creditors listed in the filing. In Chapter 11 cases, the ~~CD or diskette~~ **list** must include equity security holders, if applicable. An exception to the requirement will be considered by the Court if a request for waiver is filed with the petition.

## Comments

The rule is edited to update the permissible media used by pro se debtors to provide their creditor list, and to anticipate possible future technological changes.

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

#### (a) Form of Amendments

All amendments to voluntary petitions, lists, schedules, statements and other documents shall comply with Fed.R.Bankr.P. 1009 and S.D.Ind. B-1007-1, and shall be accompanied by the appropriate filing fee. Any amendment which adds a creditor shall state the date the debt was incurred. Each amendment shall also be verified and signed by the Debtor under penalty of perjury. If an amendment changes the totals on any schedule, then the Debtor shall also file an Amended Summary of Schedules and an Amended Statistical Summary of Certain Liabilities. An amendment which adds creditors and is filed non-electronically shall be accompanied by a CD, ~~or~~ diskette, **DVD, flash drive or other acceptable medium** listing the added creditors only.

#### (b) Amendments Adding or Changing Status of Creditors: Notice Requirements

- (1) If an amendment adds creditors, the Debtor shall also upload creditor information at the time of filing or, if filed non-electronically, shall provide a new CD, ~~or~~ diskette, **DVD, flash drive or other acceptable medium** pursuant to S.D. Ind. B-1007-1(c).

## Comments

Amended to conform with the proposed change to B-1007-1.

### **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

- (1) Service of Notice and Hearing

(i) **Service of Employment Application**

The Applicant shall serve the Employment Application (including supporting affidavit or verified statement of the Professional and any supplemental affidavit) ~~shall be served~~ on the Service List.

(ii) Notice of Employment Application

The Applicant shall also send notice of the Employment Application, ~~an objection deadline, and any hearing shall be distributed~~ to the Notice List. The notice shall include the name(s) of the Professional(s) sought to be employed, a summary of the terms of employment, and – if the Employment Application also requests approval of a periodic payment procedure pursuant to subparagraph (b)(4) or (5) of this rule – the proposed terms for such periodic payment. The notice shall allow twenty-one (21) days for objection. The Applicant shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2.

(iii) Objections, Court Review, and Effective Date

~~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~~ must be filed and served 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 and any periodic payment procedure 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.

(2) 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~~.

(3) ~~Disclosure of Compensation and Retainers~~ Treatment of Retainer

~~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:

- (A) 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;
- (B) 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;
- (C) Pursuant to subparagraph (b)(4) 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
- (D) Any other arrangement approved by the Court.

(4) Procedure for Periodic Payment from Retainer

~~Subject to prior Court approval,~~ **The Court may approve a request by** the Professional and the Debtor ~~may agree to~~ **for** a streamlined procedure for periodic payment of fees and costs from any retainer, 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.

- (A) **If requested as part of the Application, the proposed procedure shall be summarized in the notice of the Application required by subparagraph (b)(1)(ii) of this rule. If requested separately, the Applicant shall provide notice in the same manner as required by subparagraph (b)(1)(ii) of this rule.**
- (~~A~~ B) 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. **(The CM/ECF event "Notice of Draw on Retainer/Payment of Fees or Expenses Pursuant to B-2014-1" should be used.)**
- (~~B~~ C) A copy of the Notice of Draw shall be 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.

(5) Other Periodic Payment Procedure

The Court may approve procedures for periodic payment, other than from a retainer, ~~upon separate application and notice. A proposal for periodic payments based on actual fees incurred should limit payment to 80% of the billed amount of fees, but may provide for payment of 100% of incurred expenses.~~ Any such procedure is subject to the provisions of subparagraph (b)(4) of this rule.

Comments

The changes shift the responsibility for noticing applications to employ in Chapter 11 cases onto the applicant, and therefore spell out the contents of the notice and require a certificate of service. For consistency, the rule makes clear that periodic payment procedures other than drawing from a retainer are subject to the same limits as and process for draws on retainers.

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

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(b) Extend or Impose the Stay

(1) Motion Filed Ten (10) Days or Less After ~~Filing~~ Petition Date

- (A) The Motion will be set for hearing, and notice of that hearing and the deadline for objections will be issued by the Court.
- (B) If, by the deadline, the Debtor has filed an affidavit with sufficient facts to support the motion and no objection has been filed, then the Court may, in its discretion, rule on the motion without hearing, conduct a telephonic hearing, or make such other arrangements as will be most efficient for the Court and the Debtor, including but not limited to excusing the Debtor from appearing in person.

(2) Motion Filed More than Ten (10) Days After ~~Filing~~

### Petition Date

- (A) Notwithstanding Fed.R.Bankr.P. 9006(c), a motion to extend or impose the stay shall be subject to this subsection even if the tenth day after the petition date falls on a Saturday, Sunday, or legal holiday.
- (B) The movant shall contact the Courtroom Deputy for the Judge assigned to the case and obtain a hearing date.
- (~~B~~C) The movant shall send notice of the Motion and the hearing to those creditors as to whom it is proposed that the stay be imposed or extended.
- (~~C~~D) The movant shall file a certificate of service that complies with S.D.Ind. B-9013-2 on or before the hearing date.
- (~~D~~E) Debtor's attendance at the hearing may be required, even if no objection is filed.

### Comments

The proposed edits clarify that the ten-day period distinguishing a motion to extend or impose the stay counts the days from the filing of the petition, with no extension should the tenth day fall on a weekend or holiday.

## **B-4001-4. MOTIONS TO MODIFY MORTGAGES**

Any motion to modify a mortgage shall include in the body of the motion the following information as to the loan both immediately before and after the proposed modification: the principal loan balance, the rate of interest, the amount of the monthly escrow for taxes and insurance, the monthly payment, and the maturity date of the proposed modified note. [Sample motions for Chapter 7 and Chapter 13 cases are available on the Court's website.](#)

### Comments

Since the rule became effective in late 2015, sample forms have been developed so reference to those forms is added.

## **B-6004-2. PRIVATE SALE**

### (a) "Private Sale" Defined

For the purpose of this rule, a "private sale" is defined as a sale to a specific entity

on terms that are fixed at the time the motion to sell is filed, with no consideration of competing bids contemplated.

(b) Contents of Motion: All Chapters

Any Motion to Sell by private sale shall identify:

- (1) the property to be sold;
- (2) the prospective purchaser (“Prospective Purchaser”);
- (3) the sales price and an estimate of the net proceeds to be received by the estate (including a deduction for any exemption);
- (4) a brief summary of all material contingencies to the sale, together with a copy of the agreement, if available;
- (5) a description of the manner in which the property was marketed for sale, and a description of any other offer to purchase;
- (6) a description of any known relationship between the Prospective Purchaser and its insiders and the Debtor and its insiders or the trustee;
- (7) a statement setting forth any relationship or connection the trustee or the Debtor (including its insiders) will have with the Prospective Purchaser or its insiders after the consummation of the sale, assuming it is approved; and
- (8) 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);
- (9) if the proposed sale seeks to sell property free and clear of liens or other interests pursuant to 11 U.S.C. § 363(f), the names of the lien or interest holders to the extent such names are known.

(c) Contents of Motion: Additional Requirements in Chapter 11 Cases

Any Motion to Sell by private sale 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 (b), the following:

- (1) 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; and

- (2) 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.

(d) Notice

- (1) Distribution; Contents; Certificate of Service 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, as determined by subparagraphs (2) and (3) below. The notice shall contain all of the information required by subparagraph (b) and (c) of this rule. The movant shall file 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 combined motion to sell, notice, and certificate of service is available on the Court's website.

- (2) Chapter 7, 12, and 13 Cases

Unless the Court by separate order shortens the notice period, in a Chapter 7, Chapter 12, or Chapter 13 case, the movant shall distribute notice that provides twenty-one (21) days after the date of service for objections to be filed.

- (3) Chapter 11 Case

In a Chapter 11 case, the movant shall contact the courtroom deputy to obtain direction as to whether the Court desires a notice with opportunity to object to the motion or a notice of the hearing date. The movant shall distribute the notice and file a certificate of service.

(e) Report of Sale

After a private sale has been completed, the movant shall file a report of sale pursuant to Fed.R.Bankr.P. 6004(f)(1).

Comments

The Committee recommends that Rule 6004-2 be amended to include a requirement that known lien and interest holders be disclosed in any motion filed under §363(f). In the Committee's view, such information will help the Court better evaluate whether the motion was properly served under FRBP 6004(c) and will also provide additional notice to those parties whose rights

may be affected by the sale. Court staff reports that such information is currently often not being provided, especially in sale motions filed by debtors in Chapter 13 cases.

### **B-6004-3. PRIVATE SALE BY AGENT**

(a) “Private Sale by Agent” Defined

A “private sale by agent” is defined as the sale by the trustee or Debtor of estate property other than real estate using an agent that is in the business of selling such property in a “commercially reasonable manner” that would satisfy Indiana Code §26-1-9.1-610. At the time approval of the sale is sought, the trustee or Debtor has not identified the purchaser or the exact purchase price.

(b) Contents of Motion

Any Motion to Sell by private sale using an agent shall identify:

- (1) the property to be sold;
- (2) information to support the determination that the agent is in the business of selling similar property in a commercially reasonable manner;
- (3) the amount of any exemption claimed in the property; and
- (4) 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);
- (5) **if the proposed sale seeks to sell property free and clear of liens or other interests pursuant to 11 U.S.C. § 363(f), the names of the lien or interest holders to the extent such names are known.**

(c) Combining Retention and Compensation of Agent with Motion

The trustee or Debtor may combine a request to retain and to compensate the agent with the motion to sell. Any such request shall provide the information required by Fed.R.Bankr.P. 2014, describe how compensation will be determined, and estimate the fees to be paid.

(d) Notice

Unless the Court by separate order shortens the notice period, the movant shall distribute notice that provides twenty-one (21) days after the date of service for objections to be filed. The notice shall include a description of the property to be sold; the name of and contact information for the agent; the proposed terms of

compensation for the agent, if proposed retention has not been noticed separately; and the location of the property prior to sale. The movant shall also file 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 combined motion to sell, notice, and certificate of service is available on the Court's website.

(e) Report of Sale

After a private sale by agent has been completed, the movant shall file a report of sale pursuant to Fed.R.Bankr.P. 6004(f)(1).

Comments

The Committee recommends that Rule 6004-3 be amended to include a requirement that known lien and interest holders be disclosed in any motion filed under §363(f). In the Committee's view, such information will help the Court better evaluate whether the motion was properly served under FRBP 6004(c) and will also provide additional notice to those parties whose rights may be affected by the sale. The Court staff reports that such information is currently often not being provided, especially in sale motions filed by debtors in Chapter 13 cases.

**B-6004-4. SALE BY AUCTION**

(a) "Sale by Auction" Defined

A "sale by auction" is any sale by public auction, with no previously identified initial bidder.

(b) Contents of Motion

Any Motion to Sell by auction shall identify:

- (1) the property to be sold;
- (2) the name of and contact information for the entity conducting the auction;
- (3) the date, time and place of the sale, if known, or instructions on how that information can be obtained;
- (4) any bid procedures proposed for the sale, even if those bid procedures were previously disclosed in an application to employ an auctioneer; and
- (5) 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);

- (6) if the proposed sale seeks to sell property free and clear of liens or other interests pursuant to 11 U.S.C. § 363(f), the names of the lien or interest holders to the extent such names are known.

(c) Notice

Unless the Court by separate order shortens the notice period, the movant shall distribute notice that provides twenty-one (21) days after the date of service for objections to be filed. The notice shall provide the information required by subparagraph (b) of this rule. The movant shall also file 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 combined motion to sell, notice, and certificate of service is available on the Court's website.

(d) Report of Sale

Unless otherwise ordered by the Court, after an auction the auctioneer or the party that filed the application to employ the auctioneer shall file the report pursuant to Fed.R.Bankr.P. 6004(f)(1).

Comments

The Committee recommends that Rule 6004-4 be amended to include a requirement that known lien and interest holders be disclosed in any motion filed under §363(f). In the Committee's view, such information will help the Court better evaluate whether the motion was properly served under FRBP 6004(c) and will also provide additional notice to those parties whose rights may be affected by the sale. The Court staff reports that such information is currently often not being provided, especially in sale motions filed by debtors in Chapter 13 cases.

**B-6004-5. SALE WITH PROSPECTIVE PURCHASER IDENTIFIED BUT BIDS CONSIDERED**

(a) "Sale with Prospective Purchaser Identified but Bids Considered" Defined

A "sale with prospective purchaser identified but bids considered" is also known as a "sale with a stalking horse bidder," and is a proposed sale to a specific entity for a set price, with competitive bids to be considered.

(b) Contents of Motion to Sell With Bid Procedures

Any Motion to Sell to a prospective purchaser but with bids considered shall identify or include:

- (1) the property to be sold;

- (2) the prospective purchaser (“Prospective Purchaser”);
- (3) the sales price and an estimate of the net proceeds to be received by the estate (including a deduction for any exemption);
- (4) a brief summary of all material contingencies to the sale, together with a copy of the agreement, if available;
- (5) if the proposed sale seeks to sell property free and clear of liens or other interests pursuant to 11 U.S.C. § 363(f), the names of the lien or interest holders to the extent such names are known;
- (6) the executory contracts and leases proposed to be assumed or rejected as part of the sale, if any;
- (7) a description of the manner in which the property was marketed for sale, and a description of any other offer to purchase;
- (8) a description of any known relationship between the Prospective Purchaser and its insiders and the Debtor and its insiders or the trustee;
- (9) a statement setting forth any relationship or connection the trustee or the Debtor (including its insiders) will have with the Prospective Purchaser after the consummation of the sale, assuming it is approved;
- (10) if a topping fee or break-up fee is proposed to be paid to the Prospective Purchaser if another bidder prevails at the sale, 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;
- (11) 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;
- (12) any bid procedures proposed for the sale;
- (13) 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); and
- (14) if the case is pending under Chapter 11, and proposes the sale of all or substantially all of the Debtor’s assets, the following:

- (A) 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; and
- (B) 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.

(c) Notice of Motion to Sell and to Approve Bid Procedures

~~After obtaining direction from the Court as to the contents of the notice, the movant shall distribute notice of the motion to sell and of the proposed bid procedures. The movant shall prepare, for Court review, a notice of the motion to sell and of the proposed bid procedures that contains the information required by subsection (b) of this rule. If the Court directs a notice of the opportunity to object is directed, unless the Court by separate order has shortened the notice period, that the notice shall provide twenty-one (21) days after the date of service for objections to be filed, unless the Court by separate order has shortened the notice period. The notice shall provide the information required by subparagraph (b) of this rule. The Court may instead direct the issuance of a hearing notice and will provide the movant with a hearing date and time that shall be included in the notice. The movant shall also file a certificate of service that complies with S.D.Ind. B-9013-2. Upon distribution of the notice, the movant shall also file 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 combined motion to sell and to approve bid procedures, notice, and certificate of service is available on the Court's website.~~

(d) Notice of Approval of Bid Procedures and of Sale Process Order Establishing Bid Procedures and Notice of Sale Hearing

~~If the Court enters an order approving the bid procedures and setting the sale process, then the movant shall distribute notice of that order. Upon expiration of the objection period or upon conclusion of a hearing on the proposed bid procedures, the movant shall provide the Court with an Order Establishing Bid Procedures and Notice of Sale Hearing. The notice Order shall include the bid procedures; the date, time, and place where bids will be considered; and the date, time, and place of the hearing to approve the sale; and the deadline, if any, by which parties must object to the proposed sale. Upon entry of the Order, the movant shall make distribution and shall also file a certificate of service that complies with S.D.Ind. B-9013-2. A sample combined notice and certificate of service is available on the Court's website.~~

(e) Order Approving Sale

(1) Sale to Prospective Purchaser

If the Prospective Purchaser prevails at the sale, then the Court shall enter an order approving that sale.

(2) Sale to Different Entity: No Change in Terms Except Price

If a sale pursuant to this rule results in a sale to a party other than the identified Prospective Purchaser, with no change in terms other than the purchase price, then at the hearing on approval of the sale the movant shall identify the successful purchaser and the change in price, and shall make any request for approval of a topping or break-up fee if one was disclosed in the motion to sell. The Court shall enter an order approving that sale.

(3) Sale to Different Entity with Change in Terms

If a sale pursuant to this rule results in a sale to a party other than the identified Prospective Purchaser, and the terms of that sale other than price have changed, including but not limited to the proposed assumption or rejection of leases and contracts, then the movant shall identify the successful purchaser and the change in terms and shall make any request for approval of a topping or break-up fee if one was disclosed in the motion to sell. The Court shall consider whether the change in terms requires additional notice to parties who may be affected by those changes. If no additional notice is required, the Court shall enter an order approving the sale. If additional notice is required, the Court shall enter the order approving the sale only after such additional notice period.

(f) Report of Sale

No later than fourteen (14) days after a sale pursuant to this rule has been completed, the movant shall file a report of sale pursuant to Fed.R.Bankr.P. 6004(f)(1).

Comments

The Committee recommends that Rule 6004-5 be amended to include a requirement that known lien and interest holders be disclosed in any motion filed under §363(f). In the Committee's view, such information will help the Court better evaluate whether the motion was properly served under FRBP 6004(c) and will also provide additional notice to those parties whose rights may be affected by the sale. The Court staff reports that such information is currently often not being provided, especially in sale motions filed by debtors in Chapter 13 cases.

The Committee also recommends several changes to Rule 6004-5(c) and (d) to clarify issues that have arisen with the current form of the rule and to streamline the procedural steps provided by the rule. The proposed changes to subsection (c) are intended to make clear that the notice of the proposed bid procedures must be reviewed by the Court prior to it being filed and distributed.

Subsection (c) has also been tweaked to provide more flexibility for the Court to direct either an objection or hearing notice. The proposed changes to subsection (d) are intended to simplify the process by eliminating the need for a separate order and notice on the approved bid procedures. A combined order and notice is, instead, contemplated. The Committee also recommends that an objection deadline for the sale hearing be included in the combined order/notice. The rule allows for, but does not require, such a deadline.

The reference to sample forms was removed. Use of this sale process is fairly rare and is highly fact sensitive, so forms would be difficult to fashion and might not be particularly helpful.

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

### **(a) Notice Procedure in Chapter 7 Cases**

#### **(1) Abandonment by Trustee by Filing Report of No Distribution.**

##### **(A) Language in Meeting of Creditors Notice.**

###### **(i) Report of No Distribution as Notice of Possible Abandonment**

The §341 meeting notice for a Chapter 7 case shall inform creditors and other parties in interest that the trustee's filing of a report of no distribution shall serve as a notice of possible abandonment pursuant to Fed.R.Bankr.P. 6007 of all property of the estate listed on the debtor's schedules ("Listed Property").

###### **(ii) Obtaining Notice of Report of No Distribution**

The §341 meeting notice shall also provide that no further notice to creditors and other parties in interest is ~~not~~ required for the abandonment of any property to become effective fourteen (14) days after the filing of the report of no distribution unless a party in interest, no later than one day before the first date set for the §341 meeting, files a request for further notice of abandonment.

**(B) Request for Notice.** If a party files a request for notice pursuant to subparagraph (a)(1)(A)(ii) of this rule, then if the trustee files a report of no distribution, the Clerk shall give notice of that filing to the requesting party. That notice shall give the requesting party fourteen (14) days from the service of the notice to object to the abandonment. If the request for notice was filed by an attorney participating in the Court's CM/ECF system, then the notice of electronic filing generated at the time the report of no distribution was filed is sufficient.

#### **(2) Notation of Abandonment on Docket**

Fourteen (14) days after the trustee's filing of a report of no distribution, or if a party has requested notice of the filing of the report of no distribution, then fourteen (14) days after that notice if no objection to the proposed abandonment is filed, the Clerk shall note on the case docket that pursuant to this Local Rule all Listed Property is deemed abandoned.

~~(a3)~~ Trustee's Notice of Possible Assets and Abandonment. In a Chapter 7 cases where the trustee files a notice of possible assets and abandonment, the Clerk shall give notice to all creditors and parties in interest of ~~identifying~~ those assets which are not being abandoned by the trustee, and of the proposed abandonment of all other assets **Listed Property**.

~~(b4)~~ Trustee's Notice of Abandonment After Report of Possible Assets. In a 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 distribute the notice 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. A sample notice is available on the Court's website.

**(5) Motion to Abandon Filed by Party in Interest.** A motion to abandon in a Chapter 7 case filed by any party other than the trustee shall comply with subparagraph (b) of this rule.

~~(e b)~~ Motion to Abandon Filed by Party in Interest **Notice Procedure In All Other Chapters**

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 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. B-9013-2. A sample notice is available on the Court's website.

### Comments

The current order in no asset case process, which includes language abandoning property and is unique to the Southern District of Indiana, technically violates Fed.R.Bankr.P. 6007 and its requirement of notice. However, comments to the national rule invite Courts to streamline the notice of proposed abandonment process by local rule and use of notice language within the notice of the meeting of creditors.

The Committee's alternative proposal has three prongs:

- A local rule that says the no distribution report results in proposed abandonment (and

requires notice of that fact to be in the creditor meeting notice);

- Language in the creditor meeting notice (see below); and
- Docket text entered after the trustee's no distribution report that confirms property has been abandoned (also see below).

(Use of the "proposed abandonment" phrase matches up with Fed.R.Bankr.P. 6007.)

If this change is adopted, the first meeting notices in all Chapter 7 cases will say this:

Pursuant to Local Bankruptcy Rule B-6007-1, the trustee may give notice of the proposed abandonment of all property of the estate by filing a report of no distribution. No further notice of the proposed abandonment is required, unless a party in interest, no later than one day before the first date set for the §341 meeting, files a request for further notice of proposed abandonment. Any party filing such a request will be given notice that the report of no distribution has been filed, and shall have fourteen days to object to abandonment.

The docket entry after the report of no assets would read:

Pursuant to Local Bankruptcy Rule B-6007-1, all property of the estate listed in the schedules filed by the debtor(s) has been abandoned.

(The proposal includes some minor edits to other sections of the rule that do not involve no asset Chapter 7 cases.)

## **B-7007-1. MOTION PRACTICE IN ADVERSARY PROCEEDINGS**

### (a) Motions to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6)

#### (1) Movant's Obligations

If a party files a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), made applicable to bankruptcy matters by Fed.R.Bankr.P. 7012(b), then that motion shall be accompanied by a brief in support of the motion. Unless otherwise ordered by the Court, the supporting brief shall be no more than thirty-five (35) pages. In the alternative, the moving party may file a separate motion asking to be excused from the briefing requirement.

#### (2) Non-Movant's Obligations

The responding party shall have twenty-eight (28) days after the movant serves the motion and any brief to file and serve a response and a brief. The response and brief may be combined into one document. Unless otherwise ordered by the Court, the response brief shall be no more than thirty-five (35) pages. If the moving party has been excused from filing a brief, then the responding party may elect not to file a brief but shall state

in the response that no brief will be filed. If no response is filed by the deadline, the court shall consider the motion to dismiss.

(3) Reply

If the responding party filed a response brief, the movant may file and serve a reply brief within fourteen (14) days after a response is served. Unless otherwise ordered by the Court, the reply brief shall be no more than twenty (20) pages.

(b) Motions to Dismiss Other Than Pursuant to Fed.R.Civ.P. 12(b)(6)

Unless the court orders otherwise, if a party files a motion to dismiss other than pursuant to Fed.R.Civ.P. 12(b)(6), then the responding party shall have twenty-eight (28) days after the movant serves the motion to file and serve a response. If no response is filed, the court shall consider the motion.

(c) Motions for Summary Judgment

Local Rule B-7056-1 sets the procedure for motions for summary judgment in adversary proceedings.

(d) Motions to Dismiss Actions Concerning Denial of Discharge

If the motion to dismiss concerns a proceeding that includes a request to deny discharge, Local Rule B-7041-2 governs as to notice.

Comments

This rule was added in December 2015, but it was then discovered that the rule was not coordinated with B-7041-2, which governs noticing a motion to dismiss when a §727 matter is part of the adversary proceeding. This rule would include a cross reference to B-7041-2, and the notice period in that rule is changed to match the one in this rule.

**B-7041-2. COMPLAINTS TO DENY OR REVOKE DISCHARGE:  
DISMISSAL OR SETTLEMENT**

(a) Contents and Service of Notice of, Motion for, or Stipulation Regarding Voluntary Dismissal of Complaint to Deny or Revoke Discharge

Any dismissal, whether by notice, motion or stipulation, of a complaint to deny or revoke the Debtor's discharge pursuant to 11 U.S.C. §727, shall be served upon the UST, any trustee, counsel of record, and any party that has intervened in the adversary proceeding pursuant to Fed.R.Bankr.P. 7024. The notice, motion or

stipulation shall contain a recital concerning the consideration, if any, for the dismissal or the terms and conditions of any agreement concerning the dismissal.

(b) Objection to Dismissal

Unless the UST, the trustee, or another entity seeks to intervene or to be substituted for the plaintiff in the proceeding or objects to the dismissal within ~~twenty-one (21)~~ **twenty-eight (28)** days following service of the motion, the Court may dismiss the complaint and/or close the adversary proceeding, upon such terms and conditions as it deems proper, without further notice or hearing.

Comments

The time period for objecting to dismissal is increased to 28 days to match the time period set generally as to motions to dismiss adversary proceedings in B-7007-1.