

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA

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

The Court is proposing edits to its local rules, to be effective December 1, 2018. A complete set of the proposed amendments accompanies this notice.

Edits required by changes to the national rules effective December 1<sup>st</sup> appear in Local Rules B-3002.1-1, B-3002.1-2, and B-5005-1. Note that the change to 3002.1-1 introduces a new ECF event, “Motion to Determine Validity of Payment Change.”

Most of the other edits reflect ongoing efforts to impose a uniform style on and bring better clarity to the local rules. Approximately one half of the current local rules – the 1000 series to the 4000 series – will receive such edits. (A few rules in the 4000 series are not included, because the local rules committee is considering possible substantive edits to those.)

A few substantive edits are proposed, including to the following rules:

1008-1: A new rule that establishes the obligation to verify the creditor list or “matrix.” Case filing software includes this verification, so the rule is aimed at pro se filers.

2002-1: In subparagraph (g)(2), the requirement to file a notice of address unavailability for a creditor that cannot be located is made discretionary.

3018-1: Minor changes to the Chapter 11 plan confirmation process are made.

7007-1: Edits match changes made to the District Court’s comparable local rule 7-1, shortening the time for a reply to certain motions to dismiss to 21 days and clarifying that when the complainant has the right to file an amended complaint without court order that amended complaint can be a response to the motion to dismiss.

The Judges reserve the right to make additional changes to the rules, based on comments received, before the December 1<sup>st</sup> effective date.

Comments to the proposed rules edits 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 5:00 PM on Wednesday, November 28, 2018.

November 6, 2018

/s/ Kevin P. Dempsey  
Clerk

## Fall 2018 Amendments

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

(a) Abbreviations Applicable to All Rules

- ~~(1) Clerk: the Clerk of the Court~~
- ~~(2) Court: the United States Bankruptcy Court for the Southern District of Indiana~~
- (1) Fed.R.Bankr.P.: the Federal Rules of Bankruptcy Procedure
- (2) S.D.Ind. B- \_\_\_\_: a local rule of the United States Bankruptcy Court for the Southern District of Indiana
- (3) S.D.Ind. L.R. \_\_\_\_: a local rule of the United States District Court for the Southern District of Indiana
- (4) Fed.R.Civ.P.: the Federal Rules of Civil Procedure
- (5) UST: the United States Trustee for Region 10 **and/or the Executive Office for the United States Trustees**
- (6) U.S.C.: the United States Code
- (7) SSN: Social Security Number
- (8) ITIN: Individual Taxpayer Identification Number

(b) Definitions Applicable to All Rules

Capitalized terms in these local rules are defined below or in the rule where the term is used, or are the title to an official form or specific ECF event.

- (1) **Appearance:** an appearance that complies with S.D.Ind. B-9010-1
- (2) **Certificate of Service:** a document that complies with S.D.Ind. B-9013-2
- (3) **Clerk:** the Clerk of the Court
- (4) **Court:** the United States Bankruptcy Court for the Southern District of Indiana
- (5) **Debtor:** includes both debtors in a joint case and a debtor-in-possession in a Chapter 11 or Chapter 12 case. **In the context of service of pleadings and notices, “the Debtor” includes the Debtor and counsel of record for the Debtor.** A requirement imposed upon the “Debtor” by these rules shall be performed by counsel for the Debtor, if any, except as follows:
  - (A) Official Forms ~~must~~ **shall** be signed by the Debtor or the Debtor’s representative in a non-individual case ~~pursuant to~~ **under** Fed.R.Bankr.P. 9001(5); and
  - (B) if counsel for the Debtor in the bankruptcy case has not entered an appearance in the matter pending before a state court or other tribunal, ~~then~~ the notices required by B-4002-1(a) shall be signed by the Debtor or any attorney who has entered an appearance for the Debtor in the non-bankruptcy matter.
- (6) **Trustee or trustee:** ~~refers to~~ the trustee appointed in a bankruptcy case under 11 U.S.C. §§701, 702, 1104, 1202, or 1302.

- (7) Meeting of Creditors: includes the first meeting set under 11 U.S.C. §341 and any continued meeting.
- (8) Notice List: the Service List and parties required to receive notice pursuant to under Fed.R.Bankr.P. 2002, unless the Debtor has obtained an order limiting notice.
- (9) Service List: the Debtor, the Debtor's counsel, the twenty largest unsecured creditors in a Chapter 11 case or, if applicable, the unsecured creditors' committee, the UST, all secured creditors, any an indenture trustee, any other a committee appointed under 11 U.S.C. §1102 or 1114, and any counsel or party that has filed an Appearance pursuant to S.D. Ind. B-9010-1. If counsel appears for any a party listed above, then such that counsel shall be substituted for the party for purpose of this definition, absent a specific request by the party that it be retained on the Service List.
- (10) ~~Non-electronically in reference to filing means delivery of documents on paper, and includes CDs, diskettes, DVDs, flash drives, and other acceptable media.~~
- (11) ~~Non-electronically in reference to service means other than by electronic means and in accordance with Fed.R.Bankr.P. 7004.~~
- (10) Court's website: refers to the Court's website located at <http://www.insb.uscourts.gov>.
- (11) Objection Notice: a notice that the filer is required to distribute to designated parties which gives a time period after service for the filing of objections or responses. A rule with this reference gives the time period and designates the parties to whom the notice is distributed.

#### Comments

New definitions have been added to provide clarity in and allow the shortening of later rules. Former subparagraph (b)(5) – which appears above as stricken subparagraph (9) - is moved to B-5005-1. Former subparagraph (b)(6) – which appears above as stricken subparagraph (10) - is dropped as unnecessary.

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

#### (a) Initial Filing

A voluntary case is commenced by the filing of a voluntary petition along with the lists, schedules, statements, and other documents required by Fed.R.Bankr.P. 1002, 1007 and 11 U.S.C. §§301 and 521 or by subparagraph (b) of this rule. Filings can be made either electronically or non-electronically ~~in accordance with~~ under S.D. Ind. B-5005-1(e) and B-5005-4.

(b) Emergency Filing: Minimum Required

Any voluntary petition filed without the lists, schedules, statements, and other documents required by Fed.R.Bankr.P. 1007 and 11 U.S.C. §521 ~~must~~ shall be accompanied by:

- (1) if the Debtor is an individual, a certificate of counseling from ~~the course provider~~ an approved credit counseling agency or, if the certificate is not filed, a Motion Requesting Temporary or Permanent Waiver of Credit Counseling Requirement pursuant to ~~under~~ 11 U.S.C. §109(h);

\*\*\*\*\*

(c) Emergency Filing: Dismissal for Failure to Provide Required Documents

Failure to submit the above required items at the time of filing or within ~~seven (7)~~ days thereafter may result in dismissal of the case pursuant to ~~under~~ S.D. Ind. B-1017-1(b). Any request for an extension of time to file the other documents required by this rule ~~must~~ shall comply with Fed.R.Bankr.P. 1007.

\*\*\*\*\*

(e) ~~Place of Filing~~ Transfer to Correct Division

~~For cases filed non-electronically, all petitions, lists, schedules, statements, and other documents required by the Bankruptcy Court to commence a case shall be filed with the office of the Clerk in the division where the principal place of business, domicile, residence, or principal assets of the Debtor have been located for such period of time as required by 28 U.S.C. §1408. If the Court determines that a case has been filed in the incorrect division, the Court may transfer the case to the correct division without notice. All papers tendered for filing after the commencement of a case shall be filed with the office of the Clerk in the division where the case is pending.~~

Comments

Subparagraph (e) is edited to reflect actual practice: a non-electronic filing can be made in the wrong division and will be assigned to the correct division by Clerk staff. Cases filed electronically are assigned automatically to the correct division (presuming the filer notes the correct county). Other edits are for style uniformity and clarity.

**B-1006-1. PAYMENT OF FILING FEE IN INSTALLMENTS**

(a) Application Form

The application shall ~~substantially~~ conform **substantially** to Official Form 103A.

(b) Payment Schedule

A Debtor filing an application to pay initial filing fees in installments shall propose a payment plan ~~in accordance~~ **consistent** with the installment fee schedule maintained by the Clerk and available on the Court's website.

(c) Payment Due Dates

~~Unless otherwise ordered by the Court~~ Payments shall be due on the same day of the month on which the petition was filed ~~unless the Court orders otherwise~~. If the installment due date falls on a day when the Court is closed, payment is due no later than the next business day.

\*\*\*\*\*

(e) Requirement to Pay Installments Electronically

~~If the Debtor is represented by counsel, then~~ All payments must be made by counsel and ~~counsel shall pay~~ **electronically if the Debtor is represented by counsel.**

Comments

Edits are for style uniformity and clarity.

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

(a) Additional Requirements

**All schedules and statements**, in addition to complying with the Federal Rules of Bankruptcy Procedure and Official Forms, ~~all schedules and statements~~ shall:

- (1) contain a response to each request for information on the statement of affairs and the schedules, even if ~~such~~ **the** response is “no,” “none,” or “not applicable;”
- (2) specifically describe and itemize all property claimed as exempt, and state the statutory reference and section number of the statute under which ~~such~~ **the** exemption is claimed;
- (3) list the creditors on each schedule in alphabetical order, including the full mailing address and zip code for each listed creditor, or include a statement that the address is unknown;
- (4) provide on Schedule E/F the name and address of ~~any~~ **an** entity holding a domestic support obligation, and identify that entity as the holder of a domestic support obligation, even if the Debtor is current on that obligation when the case is filed;
- (5) ~~file~~ **be accompanied by one of the following:**
  - (A) pay advices as required by 11 U.S.C. §521(a)(1)(B)(iv);
  - (B) ~~file~~ a certification that the Debtor has not been employed by ~~any~~ **an** employer within the ~~sixty~~ **(60)** days before filing of the petition; or

- (C) ~~file~~ a certification that the Debtor's employer does not issue pay advices and the Debtor has no other evidence of payment received within the ~~sixty (60)~~ days before filing; and
  - (6) list a state court or administrative agency only if that entity is the actual creditor and not just the tribunal ~~of~~ ~~for~~ a claim, debt, or lawsuit.
- (b) Providing Creditor Information for Cases Filed Non-Electronically

All cases and ~~any~~ ~~an~~ amendment that adds creditors, filed non-electronically, must be accompanied by a CD, diskette, DVD, flash drive, or other acceptable medium ~~listing~~ ~~with~~ the complete names and addresses of the creditors listed in the filing. In Chapter 11 cases, the 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.

(c) Extensions of Time

(1) Motions Generally

~~The Court shall treat~~ the first motion for an extension of time to file the initial lists, schedules, statements, and other documents required to commence a new case ~~shall be treated by the Court~~ as a request for an extension of ~~thirty (30)~~ days and the Clerk will provide notice except as described in subparagraph (2). ~~The Debtor shall serve a~~ ~~Any~~ subsequent motion for an extension of time ~~shall be served by the Debtor~~ on the ~~any~~ trustee, the UST, any examiner, and any committee, and ~~such that~~ service shall constitute the notice required by Fed.R.Bankr.P. 1007(c).

(2) Presumption of No Objection

The UST and any trustee ~~appointed in a case,~~ ~~any~~ examiner, and ~~any~~ ~~or~~ committee are deemed to have no objection to the first motion for extension of time within which to file schedules or related documents. ~~Given this subparagraph,~~ ~~The~~ Clerk is not required to give ~~any~~ notice of the first motion for extension of time.

(3) The Debtor's Waiver of Objection to Timeliness of Notice of Presumed Abuse

If the new date for filing documents is extended beyond the deadline in 11 U.S.C. §704(b)(1), ~~then~~ the Debtor is deemed to have waived any objection to the timeliness of a notice of presumed abuse which is filed no later than ~~fourteen (14)~~ days after the missing documents are filed or after the ~~Meeting of~~ ~~Creditors~~ has been concluded, whichever is later.

Comments

Edits are for style uniformity and clarity.

## B-1007-2. NOTICING, BALLOTING, AND CLAIMS AGENTS

### (a) Noticing, Balloting, and Claims in Chapter 11 Cases with More than 300 Creditors

#### (1) Requirement

~~Unless excused by order of the Court,~~ If the number of scheduled creditors in ~~any~~ Chapter 11 case exceeds 300, the Debtor or trustee ~~in a Chapter 11 case~~ shall, ~~unless the Court orders otherwise,~~ propose the retention ~~pursuant to~~ ~~under~~ 28 U.S.C. §156(c) of an entity to handle noticing (the “Noticing Agent”), an entity to receive and process claims (the “Claims Agent”), and an entity to process plan ballots (the “Balloting Agent”). One entity may serve in all three capacities (the “Agent”).

#### (2) Motion

~~The A~~ motion(s) to retain a Noticing, Claims, ~~and or~~ Balloting Agent(s), ~~or~~ a motion to be excused from compliance with this rule, or a motion for extension of time, shall be filed within ~~twenty-eight (28)~~ days after the filing of ~~any document~~ ~~schedule~~ or creditor list that ~~causes results in more than 300~~ the number of creditors ~~on the in a case to exceed.~~

#### (3) Contact with Clerk

~~Prior to employment,~~ The proposed Agent shall meet with the Clerk or the Clerk’s designee, ~~prior to employment,~~ ~~and to~~ agree on terms establishing the interactions between the ~~proposed~~ Agent and the Clerk, ~~which.~~ Those terms shall be incorporated in the order authorizing the employment of the Agent (“the “Employment Order”) or in a written agreement between the Clerk and the Agent (“the “Agreement”) that shall be made part of the record.

### (b) Noticing Agent

A Noticing Agent shall distribute notices as directed by the Court and provide ~~to the Debtor~~ proof of service ~~information to the Debtor.~~ ~~that information~~ shall be filed as established by the Agreement or the Employment Order.

### (c) Claims Agent

If a Claims Agent is to be employed, then the Agreement or Employment Order shall ~~address each of the following areas:~~

#### (1) ~~Delivery of Claims Received by the Court~~

- (1) ~~The Agreement or the Employment Order should~~ establish procedures for handling of claims filed with the Clerk prior to and after the employment of the Claims Agent.;

- (2) Mailing of Proof of Claim Forms and Notice of Bar Date
- (2) ~~Proofs of Claim with~~ **require the Claims Agent to mail** a notice of bar date ~~should be mailed by the Claims Agent and should~~ **that reflects** the scheduled amount of the creditor's claim, ~~instructs claimants to send claims to the Claims Agent and not the Court, and which notice~~ **complies** substantially with Official Forms 410, 410A, 410S1, and 410S2 ~~– unless alterations are approved by the Court, after notice to any committee and the UST, the forms shall comply~~ **– unless alterations are approved by the Court, after notice to a committee and the UST;** ~~The forms will instruct claimants to send claims to the Claims Agent and not the Court.~~
- (3) Handling of Claims and Transfers of Claims
- (3) ~~Generally~~ **provide that**, upon receipt of a claim, the Claims Agent ~~should~~ **shall** promptly date-stamp it, assign a claim number, scan the original, retain originals in a fire-proof safe or vault, and return a date-stamped copy to the claimant (if a self-addressed, postage paid envelope was provided). ~~The Claims Agent shall review the Court's docket periodically, identify notices transferring claims, and issue such notices as are required by Fed.R.Bankr.P. 3001(e);~~
- (4) Maintenance of the Claims Register
- (4) ~~Usually,~~ **require the Claims Agent to maintain** the Claims Register, ~~should be maintained by the Claims Agent. The~~ **and that the** Claims Agent ~~should~~ **shall** list the claim on the register within ~~three (3)~~ days of receipt, in alphabetical order, according to the name of the claimant (last name for individuals) and include the claimant's address, claim number assigned, date received, dollar amount claimed, and classification of claim-;
- (5) Audits of Claims Records
- (5) ~~The Agreement or the Employment Order may provide for~~ **allow** the periodic audit of claims information by the Clerk, a representative of the creditors' committee, or some other entity-;
- (6) Transmission of Claims Register
- (6) ~~The Agreement or Employment Order should~~ provide the mechanism and timing for delivery of a final Claims Register to the Clerk-;
- (7) Mailing List
- (7) **require the Claims Agent to maintain**, in addition to the Claims Register, ~~the Claims Agent should maintain~~ a separate mailing list including the claimants' addresses, edited to reflect ~~any~~ **a** notice of change of address-;
- (8) Transfers of Claims
- (8) ~~The Agreement or the Employment Order should~~ establish responsibility and method for processing transfers of claims, **including requiring the Claims Agent to**

review the Court's docket periodically, identify notices transferring claims, and issue the notices required by Fed.R.Bankr.P. 3001(e);

(9) Retention/Destruction of Documents

(9) ~~The Agreement or Employment Order should~~ provide for the retention or destruction of documents received by the Claims Agent; **and**

(10) Effect of Conversion

(10) ~~The Agreement or the Employment Order shall~~ provide for treatment and disposition of Proofs of Claim if the case is converted to Chapter 7.

(d) Balloting Agent

The Balloting Agent ~~will~~ **shall** receive, record, and tabulate ballots. The Agreement or Employment Order ~~should~~ **shall** provide for filing of a declaration showing the results of balloting and provide for the retention or destruction of original ballots.

Comments

Edits are for style uniformity and clarity.

## **B-1007-5. RESTRICTED ACCESS TO PAY ADVICES**

The Clerk shall restrict access to documents required by 11 U.S.C. §521(a)(1)(B)(iv), filed either ~~on paper~~ **non-electronically** – (when permitted) – or using **electronically through** the “Pay Advices/Statement in Lieu” event ~~in the Court's electronic filing system~~, in the same manner as access is restricted to the Statement of Social Security Number. ~~Any~~ party in interest who wants to receive a copy of the **restricted** documents ~~to which access has been restricted by this rule~~ may request ~~same~~ **them** from the Debtor.

Comments

Edits are for style uniformity and clarity.

## **B-1008-1. VERIFICATION OF CREDITOR LIST**

In addition to the requirements of S.D. Ind. B-1007-1(b) and 1009-1(a)(2), the Debtor shall file a signed and dated Verification of Creditor List, a sample form of which is available on the Court's website. The Debtor is responsible for the accuracy and completeness of the creditor information.

Comments

This rule is new and explains a debtor's obligation to file a Verification of Creditor List form when filing a list of creditors or amended creditor list non-electronically.

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

### (a) Form of Amendments

#### (1) Generally

~~All~~ Amendments to voluntary petitions, lists, schedules, statements, and other documents shall:

(A) comply with Fed.R.Bankr.P. 1009 and S.D.Ind. B-1007-1, ~~and be accompanied by the appropriate filing fee;~~

\*\*\*\*\*

(E) ~~if the amendment changes the totals on any schedule,~~ be accompanied by an amended summary of schedules and ~~if appropriate,~~ an amended statistical summary of certain liabilities, ~~if the amendment changes the total of on any schedule.~~

#### (2) Amendments Adding Creditors

Any amendment ~~which~~ ~~that~~ adds a creditor shall state the date the debt was incurred, ~~and if~~ ~~An amendment which adds creditors and is filed non-electronically,~~ shall be accompanied by a CD, diskette, DVD, flash drive, or other acceptable medium listing ~~only~~ the added creditors ~~only~~.

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

#### (1) Amendments Adding or Changing Status of Creditors

(A) 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, diskette, DVD, flash drive, or other acceptable medium ~~pursuant to~~ ~~under~~ S.D. Ind. B-1007-1(c).

(B) 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 possible assets, 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.~~ 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) If a Chapter 11 Debtor amends ~~the creditor a~~ schedules and changes the status of a claim ~~not previously listed as contingent, disputed, or unliquidated to a status of~~ contingent, disputed, or unliquidated, or changes the scheduled amount of a claim, the Debtor shall give notice to ~~that the~~ affected creditor of the change in status or amount and of the bar date for ~~filing the creditor to file a claims or a~~ ~~which is the later of the current~~

deadline for filing claims ~~that is or~~ **thirty (30 45)** days after the notice,  
~~whichever date is later.~~ A sample form is available on the Court's website.

(2) Amendments to Social Security Number **SSN** or Individual Taxpayer Identification Number **ITIN**: Notice Requirements

If a SSN or ITIN is incorrect and the notice of the ~~creditors'~~ **Meeting of Creditors** 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 of Creditors** was issued with an incorrect SSN or ITIN, the Debtor shall contact the ~~Court~~ **Clerk** and complete steps (A) through (D) below, as applicable:

- (A) ~~if the a~~ **SSN or ITIN on any a** Statement of Social Security Number is incorrect, ~~the Debtor shall~~ submit an amended statement to the Clerk;
- (B) ~~if the last four digits of the SSN or ITIN listed on the first page of the voluntary petition are incorrect, the Debtor shall file an amended petition with the correct last four digits of the SSN or ITIN;~~
- (C) ~~The Debtor shall~~ distribute notice of the corrected SSN or ITIN to all creditors, trustee, and the UST; **and**
- (D) ~~The Debtor shall file a Certificate of Service that complies with S.D.Ind. B-9013-2.~~

(3) Amendments Changing **the Debtor's Name**: Notice Requirements

If the Debtor's name is incorrect and the notice of the ~~creditors'~~ **Meeting of Creditors** 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 of Creditors** was issued with an incorrect Debtor name, the Debtor shall contact the ~~Court~~ **Clerk** and complete steps (A) through (D) below, as applicable:

- (A) ~~if the Debtor's name on the petition is incorrect, the Debtor shall~~ submit an amended petition;
- (B) ~~if the Debtor's name used for any an~~ **electronic signature is incorrect, the Debtor shall** file a declaration under penalty of perjury affirming that the documents filed with the incorrect electronic signature ~~were~~ **was** signed in the original by the Debtor using the correct name, and that the documents ~~are~~ **is** true and correct to the best of the Debtor's knowledge, information, and belief. A sample declaration is available on the Court's website;
- (C) ~~The Debtor shall~~ distribute notice of the corrected name to all creditors, ~~the~~ trustee, and the UST; **and**
- (D) ~~The Debtor shall file a Certificate of Service that complies with S.D.Ind. B-9013-2.~~

### Comments

Subparagraph (b)(1)(C) is amended to give a creditor in a Chapter 11 case whose status is edited by amendment to the schedules at least 45 days to file a proof of claim – up from 30. Other edits are for style uniformity and clarity.

## **B-1010-1. INVOLUNTARY CASES: CONSENT TO ORDER FOR RELIEF**

~~At any time after the filing of an involuntary petition and before the adjudication of that petition,~~  
The alleged Debtor can file a consent to the entry of an order for relief. ~~The consent must be as to relief under the chapter proposed by the involuntary petition,~~ **at any time after the filing of the petition and before the adjudication of that petition.** After the filing of ~~such a~~ consent, the Court may enter the order for relief without further notice or hearing.

### Comments

Edits are for style uniformity and clarity.

## **B-1010-2. INVOLUNTARY PETITIONS COMMENCED BY NON-ATTORNEYS**

### (a) Seal upon Initial Filing

~~If an~~ **Upon the filing of an** involuntary petition ~~is commenced~~ by a party who is not represented by counsel, the Clerk shall assign a number to the case and seal the names **of the alleged Debtor and the petitioning creditor(s)**, the petition, and ~~any~~ documents filed with the petition. **The Clerk shall facilitate service of the involuntary petition and the Summons to Debtor in Involuntary Case upon the alleged Debtor.**

### (b) Review of and Continuation or Termination of Seal

~~Within seven (7) days of the initial filing,~~ **The Court shall** ~~may,~~ **at any time after the initial filing and until its entry of an order for relief or an order dismissing the involuntary petition,** review the petition and supporting documents and determine whether the seal should be continued, lifted, or modified and, if necessary, hold a hearing on same.

### (c) Notice to UST

~~Immediately upon filing of any involuntary petition subject to this rule,~~ **The Clerk shall, immediately upon filing of an involuntary petition subject to this rule,** provide telephonic notice of the case to the UST

### (d) Electronic Filing by Counsel for Alleged Debtor(s)

**Counsel seeking to appear on behalf of the alleged Debtor(s) must contact the Clerk for electronic filing access in a case filed under this rule.**

## Comments

Subparagraph (d) is new and is added to establish the procedure for counsel seeking to represent an alleged debtor in a case initiated by an involuntary petition filed by a non-attorney to obtain e-filing access. Other edits are for style uniformity and clarity.

### **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 ~~under~~ 11 U.S.C. §302(a) shall be jointly administered, ~~unless the Court orders otherwise.~~ The separate estates of ~~the~~ 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, ~~unless the Court orders otherwise:~~

\*\*\*\*\*

(2) Caption

All papers, except those ~~which are to be~~ filed in a Member Case pursuant to ~~under~~ subparagraphs (b)(4) and (5) of this rule, shall have the caption with the name and case number of the Lead Case followed by the words “Jointly Administered,” except that if one of the Member Cases is for an individual Debtor then the caption shall include the Lead Case name and case number and the case name for ~~any an~~ individual Debtor. The caption for ~~any a~~ jointly administered case shall not include the word “Consolidated.”

(3) Docket

Except for the documents listed in subparagraphs (4) and (5) below, a pleading or document filed in ~~any of the~~ a jointly administered cases 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 claims register shall be maintained for each case. A separate claim must be filed in each jointly administered case in which a claim is asserted.~~

~~Any~~ A pleading related to a claim filed in a Member Case shall also be filed in that Member Case, and its caption shall have the name and case number of the Member Case. ~~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, **even if filed after the entry of the order for joint administration,** and the caption of these documents shall have the name and case number of the Member Case:

\*\*\*\*\*

(6) Ballots

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

(c) Substantive Consolidation

~~Unless otherwise ordered,~~ **S**ubstantively consolidated cases shall be administered as follows, **unless the Court orders otherwise:**

\*\*\*\*\*

(2) Caption

All documents in substantively consolidated cases shall ~~contain in~~ **have** 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~~ **an** 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~~ **Claims** 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~~ **where** originally filed ~~case~~.

Comments

Edits are for style uniformity and clarity.

**B-1016-1. NOTICE OF **THE** DEBTOR'S DEATH**

The attorney for the Debtor shall file a notice of the Debtor's death ~~in the bankruptcy case~~ as soon as possible after verifying that the Debtor is deceased.

## Comments

Edits are for style uniformity and clarity.

### **B-1017-1. CONVERSION AND DISMISSAL**

(a) “Automatic” Dismissal

- (1) ~~Notwithstanding 11 U.S.C. §521(i)(1),~~ No case shall be deemed dismissed except upon entry of an order of dismissal ~~notwithstanding 11 U.S.C. §521(i)(1).~~
- (2) If a party moves for dismissal ~~pursuant to~~ **under** §521(i)(2) and if such motion specifically requests dismissal within ~~seven (7)~~ days, the Court may dismiss the case without further notice or hearing if the docket is missing one of the items identified in 11 U.S.C. §521(a)(1)(A) and (a)(1)(B)(i) through (v). If the docket contains a filing ~~denominated as such~~ **which purports to be the required filing** but which the moving party contends fails to include all the required contents, the motion shall identify the alleged deficiency. The movant shall serve the motion on the Debtor, trustee, and UST along with a notice requiring a response to be filed within ~~fourteen (14)~~ days of service. If no ~~such~~ response is timely filed, the Court may dismiss the case without further notice or hearing. If a response is timely filed, the Court will either rule on the motion or set ~~the matter for a~~ hearing.
- (3) The Court may also dismiss a case ~~pursuant to~~ **under** 11 U.S.C. §521(i)(1) on its own motion.

(b) Dismissal for Failure to File Required Documents or Pay Filing Fee

- ~~(1) In any case where the lists, schedules, statements, and other documents described in Fed.R.Bankr.P. 1007(b)(1), (4), (5), and (6) are not filed with the voluntary petition, within fourteen (14) days thereafter or within such other period set by Court order, the Court shall enter an order of dismissal without further notice or hearing unless a motion for extension of time has been filed prior to the expiration of the period.~~
- (1) **The Court shall dismiss the case without further notice or hearing unless the document required by Fed.R.Bankr.P. 1007(f) (SSN statement, Official Form 121) is filed with the voluntary petition or within 7 days thereafter.**
- ~~(2) The Court shall also enter an order of dismissal without further notice or hearing unless the documents required by Fed.R.Bankr.P. 1007(b)(3) [credit counseling documentation or request for waiver under 11 U.S.C. §109(h)(4)] and by Fed.R.Bankr.P. 1007(f) (SSN statement, Official Form 121) are filed with the voluntary petition or within seven (7) days thereafter.~~
- (2) **In a case where the lists, schedules, statements, and other documents described in Fed.R.Bankr.P. 1007(b)(1), (3), (4), (5), and (6) are not filed within 14 days after the filing of the petition, the Court shall dismiss the case without further notice or hearing unless a motion for extension of time has been filed.**

- (3) In ~~any~~ case where the filing fee has not been paid at the time of filing or within ~~seven (7)~~ days thereafter, the Court shall ~~enter an order of dismissal~~ **dismiss the case** without further notice or hearing unless an application to pay the filing fee in installments, or, if a Chapter 7, an application to waive the filing fee, has been filed ~~prior to the expiration of the period~~. If a Debtor fails to pay a fee installment when due, the Court shall **may** dismiss the case without further notice or hearing.
- (4) In ~~any~~ case where creditor information has not been provided at the time of filing or within ~~seven (7)~~ days thereafter, the Court shall ~~enter an order of dismissal~~ **dismiss the case** without further notice or hearing unless a motion for extension of time has been filed ~~prior to the expiration of the period~~.

(c) Obtaining Relief from Dismissal Order

(1) Reopening Case

If a dismissed case has been closed, ~~any~~ party seeking relief from the dismissal order ~~must~~ **shall** file a motion to reopen and pay the required fee and a motion for relief from the dismissal order ~~pursuant to~~ **under** Fed.R.Bankr.P. 9024 as set out in subparagraph (2). (That motion for relief can be filed ~~contemporaneously~~ with the motion to reopen.)

(2) Requirement of Motion for Relief from Dismissal Order

If the dismissed case has not been closed or it has been reopened, then the party shall file the motion for relief from **the** dismissal order (unless it was filed with the motion to reopen). If the case was dismissed because of a failure to file required documents ~~contemporaneously with the motion(s)~~, the movant must submit the documents required **with the motion(s)**, or file a motion seeking an extension of time for submitting those documents. If the case was dismissed for failure to pay the filing fee or an installment, then the movant must, ~~contemporaneously~~ with the motion for relief from **the** dismissal order, pay the filing fee or ~~any~~ missed fee installment(s), or file a motion seeking an extension of time to pay the fees. If the movant fails to comply with these requirements, the motion for relief from **the** dismissal order will not be considered.

(3) Refund of Reopening Fee

~~If the motion to reopen or for relief from the dismissal order is denied, the Court may direct the refund of the filing fee for the motion to reopen only.~~

(d) Conversion

A Debtor ~~seeking to convert~~ **ing** from Chapter 12 or 13 to Chapter 7 shall file a notice of conversion ~~pursuant to~~ **under** Fed.R.Bankr.P. 1017(f)(3). A Debtor's motion to convert ~~pursuant to~~ **under** Fed.R.Bankr.P. 1017(f)(2) shall be served on ~~the a~~ trustee, ~~if any,~~ and the UST, **and counsel of record**.

(e) Service of Motion to Dismiss

A Debtor's motion to dismiss pursuant to ~~under~~ Fed.R.Bankr.P. 1017(f)(2) shall be served on ~~the~~ a trustee, ~~if any,~~ the UST, and counsel of record.

Comments

Subparagraph (c)(1) is revised to reflect actual practice. Subparagraph (c)(3) is dropped because of Judicial Conference policy discouraging refunds. Other edits are for style uniformity and clarity.

**B-1017-3. EFFECT OF DISMISSAL ON ADVERSARY PROCEEDINGS**

Whenever a case under the Bankruptcy Code is dismissed, ~~any~~ an adversary proceeding ~~arising under, arising in, or related to the case~~ then pending will ~~will~~ shall be dismissed without prejudice unless ~~otherwise ordered by the Court~~ orders otherwise either in the order dismissing the case or by separate order. A cases that have been removed to the Court shall be remanded to the Courts from which ~~they were~~ it was removed.

Comments

Edits are for style uniformity and clarity

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

\*\*\*\*\*

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

The Debtor shall distribute to added creditors the following, and shall file a Certificate of Service:

- (1) a notice providing ~~twenty one (21)~~ days for the filing of a motion for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend has been mailed in accordance with ~~under~~ Fed.R.Bankr.P. 2002(e), the time for filing a claim of a kind specified in 11 U.S.C. §348(d) (~~A~~ form notice is available on the Court's website); and
- (2) a copy of the notice of the Meeting of Creditors under the new chapter with the Debtor's full SSN or ITIN, 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.~~

(c) No Delay of First Meeting

Failure of the trustee or the Debtor to comply with Fed.R.Bankr.P. 1019 shall not delay the ~~scheduling~~ **issuance** of the ~~11 U.S.C. §341~~ **notice of the Meeting of Creditors** for the ~~Chapter 7~~ case.

(d) Waiver of Conversion Fee for Chapter 13 Trustees

The conversion fee is waived for ~~any~~ **a** motion to convert filed by a Chapter 13 Trustee ~~in a case to which that trustee has been assigned.~~

Comments

Edits are for style uniformity and clarity.

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

(a) Obtaining Service of Pleadings and/or Notices

~~Interested~~ **P**arties or their counsel who wish to receive copies of pleadings and documents ( ~~– other than proofs of claim –~~ ) shall file with the Clerk and serve the Debtor with an appearance in ~~accordance~~ **compliance** with S.D. Ind. B-9010-1. A “Request for Notice” or similar pleading will be considered a request ~~pursuant to~~ **under** Fed.R.Bankr.P. 2002(g) and will not entitle the filer to service of pleadings or of notices other than those to which the filer is already entitled, ~~nor will the address on the request be deemed the appropriate address for service of process unless the pleading so states.~~

(b) Notices Prepared and Distributed by Parties

A notice prepared and distributed by a party shall:

- (1) be signed by the party, not the Clerk or the Judge, unless its form has been approved by ~~a courtroom deputy~~ **the Court**;

\*\*\*\*\*

(c) Limited Notice in Chapter 7 Cases

In Chapter 7 cases, ~~ninety (90)~~ days after the first date set for the **M**eting of **C**reditors or, if a report of possible assets has been filed, ~~ninety (90)~~ days after the issuance of the Notice of Possible Assets, 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 Debtor, the trustee, the UST, creditors who have filed claims, and ~~any~~ creditors who are still permitted to file claims by reason of an extension granted under Fed.R.Bankr.P. 3002(c)(1) or (2).

(d) Limited Notice in Chapter 13 Cases

In Chapter 13 cases, after the entry of a confirmation order all notices required by Fed.R.Bankr.P. 2002(a) shall be mailed only to the Debtor, 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).

(e) Authorization for Chapter 13 Trustee to Recover Noticing Costs from Estate

If the Chapter 13 Trustee uses ~~the services of~~ an independent contractor for noticing, the trustee may recover the actual costs of noticing charged by that contractor from each estate. If noticing is performed by the trustee, the trustee may recover from each estate the actual costs of postage plus ~~eighteen cents~~ (\$.18) for each notice or as otherwise ordered by the Court. These noticing fees can be recovered from the first and any subsequent ~~monies~~ **funds** received from the Debtor, whether before or after confirmation. The Chapter 13 Trustee shall list expenses charged for noticing in each case and separately identify the notices sent in the final report.

(f) Notice of Final Report with Notice of Applications for Compensation

In Chapter 7 cases in which the amount of net proceeds realized exceeds the amount set forth in Fed.R.Bankr.P. 2002(f)(8), or the amount of ~~any~~ **an** application for compensation exceeds the amount set forth in Fed.R.Bankr.P. 2002(a)(6), the Chapter 7 trustee shall ~~provide~~ **send a 21-day Objection** Notice of the trustee's final report and of the applications for compensation and reimbursement of expenses. ~~That notice shall include a deadline of twenty-one (21) days from the date of the notice to file an objection to the final report or to any application for compensation and reimbursement of expenses.~~ **Trustee shall file a copy of the notice and Certificate of Service.**

(g) Returned and Undeliverable Mail

(1) Designation of ~~the~~ Debtor as Return Addressee

~~The Clerk may instruct the 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.~~

**The Debtor is designated as the return addressee for orders and notices distributed by the Bankruptcy Noticing Center ("BNC").**

(2) Duty to Provide Accurate Address

The Debtor shall file a notice of change of address for ~~any~~ **a** creditor or party in interest whose address ~~appears undeliverable~~ **may not be accurate** based either on the Debtor's receipt of returned mail or information received from the BNC. In addition, the Debtor shall distribute the documents required by S.D.Ind. B-1009-1(b)(2) to ~~any~~ **a** 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~~ **may** file a **Notice of unavailable Address Unavailability** specifying the creditor's name and reporting that a correct address cannot be located.

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

~~Unless otherwise ordered,~~ The Clerk shall docket ~~any a~~ returned notices of the Meeting of Creditors, ~~received by the Court in an open case~~ **unless the Court orders otherwise**. The Debtor shall file a notice of change of address for ~~any a~~ such a creditor, if the correct address can be identified, shall distribute the documents required by S.D.Ind. B-1009-1(b) to ~~any a~~ a 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 shall be discarded.

#### Comments

Subparagraph (g)(2) is edited to make filing of a notice that a creditor's address is unavailable discretionary rather than mandatory. Other edits are for style uniformity and clarity, and to reflect actual practice.

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

- (a) Notice when Meeting **of Creditors** Continued ~~Before Convened~~ **at the Debtor's Request**

A Debtor's request to continue a **the Meeting of Creditors** ~~should~~ **shall** 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~~ **shall** 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,~~ **If the request is granted**, the trustee shall file notice of the continued meeting date. The Debtor shall 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~~.

- (b) **Notice when Meeting of Creditors Continued by Trustee**

If a trustee, *sua sponte* **without request of the Debtor**, continues a meeting before it has been convened, then the trustee shall file notice of the continued meeting date, 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~~.

- (c) Notice when Meeting **of Creditors** Continued After Convened

When a meeting is continued after it has been convened, the trustee or UST shall provide oral notice of the continued date, time, and location of the ~~first~~ meeting, and ~~shall~~ file notice of the continued meeting date, time, and location with the Court. No further distribution of notice is required.

#### Comments

Edits are for style uniformity and clarity.

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

### (a) Employment Applications Generally

Any person (the “Applicant”) seeking Court approval of the employment of a professional person (the “Professional”) pursuant to ~~under~~ 11 U.S.C. §§327, 1103(a), or 1114 shall file ~~with the Court~~ an application and a supporting affidavit or verified statement of the professional complying with Fed.R.Bankr.P. 2014 (an “Employment Application”) and ~~submit~~ a proposed order ~~on the Employment Application~~. The Employment Application shall ~~describe~~ ~~state~~ the proposed terms of employment. If employment is ~~to be~~ at an hourly rate, the proposed hourly rates of all Professionals who will work on the case shall be provided. If employment is on a contingent fee basis, the percentages and triggering events shall be disclosed. ~~Promptly~~ After discovering any additional material information relating to ~~such the~~ employment (~~such as additional potential or actual conflicts of interest~~), the Applicant and Professional shall file and serve a supplemental affidavit disclosing the additional information.

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

#### (1) Service of Notice and Hearing

##### (A) Service of Employment Application

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

##### (B) Notice of the Employment Application

The Applicant shall also send a ~~21-day Objection Notice of the Employment Application~~ to the ~~Notice~~ Service List and other parties as directed by the Court. 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 ~~under~~ 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~~.

##### (C) Objections, Court Review, and Effective Date

Any objection must be filed and served upon the Applicant, the Professional, and the Service List, and other parties as directed by the Court. If no objection is filed by the ~~objection deadline~~, the Court may grant the Employment Application and approve the proposed employment and ~~any a~~ a 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 ~~orders otherwise~~.

(2) Conflicts

If a Professional seeks to resolve ~~any a~~ 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.

(3) Treatment of Retainer

A proposed Professional shall obtain **Court** approval ~~from the Court of an arrangement whereby the terms for applying a retainer paid by the Debtor to the Professional may be retained and applied to the satisfaction of such to the payment of the~~ Professional’s fees and expenses. Those ~~financial arrangements terms~~ may include provisions **be** similar to the following:

- (A) **apply** the retainer ~~shall be applied~~ to satisfy the Professional’s fees and expenses as they are ~~approved~~ **awarded** by the Court ~~pursuant to~~ **under** 11 U.S.C. §§330 and 331;
- (B) ~~the Professional may~~ hold the entire retainer without ~~any an~~ application for payment of fees and expenses until final ~~approval~~ **award** by the Court of ~~such the~~ 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 **under subparagraph (b)(4) of this rule; and or**
- (D) ~~any other Court-approved arrangements approved by the Court.~~

(4) Procedure for Periodic Payment from Retainer

The Court may approve a request by the Professional ~~and the Debtor~~ for a streamlined procedure for periodic payment of fees and ~~costs~~ **expenses** from ~~any a~~ retainer, prior to ~~allowance by the Court~~ **award of interim or final fees and expenses**. “Payment” includes any transfer of funds from the Debtor to the Professional ~~after the filing date~~. Any **The** proposed procedure shall provide for payment of no more than ~~eighty percent (80%)~~ of requested fees but may provide for payment of ~~one hundred percent (100%)~~ of expenses.

- (A) If requested as part of the Application, the proposed procedure shall be summarized in the **Objection Notice** ~~of the Application required by subparagraph (b)(1)(B) of this rule~~. If requested separately, the Applicant shall provide notice in the same manner as required by subparagraph (b)(1)(B) of this rule.
- (B) All such arrangements shall provide that prior to the fee draw the Professional ~~must~~ **shall** 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.)

- (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~~ allowance 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. ~~Any such procedure~~ is subject to the provisions of subparagraph (b)(4) of this rule.

Comments

Subparagraph (b)(1)(B) is edited to clarify notice on employment applications in Chapter 11 cases. Other edits are for style uniformity and clarity.

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

(a) Operating Reports

For all Chapter 11 cases, and for Chapter 7 cases in which the trustee operates a business, the trustee or the Debtor shall file reports of operations, at intervals to be determined by the UST or ~~any~~ an 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~~ an applicable rule, using forms acceptable to the trustee.

(b) Distribution

The report shall be distributed to the UST, the Debtor, ~~any~~ a trustee and counsel for the trustee, the Service List in a Chapter 11 case, and ~~any~~ a 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.

Comments

Edits are for style uniformity.

## B-2015-3. TRUSTEES: REPORTS AND DISPOSITION OF RECORDS

Except as otherwise required by the United States Code, the UST, or other applicable law, ~~the trustee or the Debtor may destroy or otherwise dispose of the Debtor's books and records six (6) months after the filing of the trustee's final account, the entry of an order dismissing a Chapter 11 case following the sale of substantially all assets, or the entry of a final decree in a liquidating Chapter 11 case, the trustee or the Debtor may destroy or otherwise dispose of the books and records of the Debtor in the trustee's or the Debtor's possession, after advising the Debtor, taxing agencies, counsel for any committee, and any other entity designated by the Court, unless an earlier disposition is authorized by the Court~~ **The following shall be advised of the proposed disposition: the Debtor, the trustee, the UST, taxing agencies, and committee counsel. The Court may authorize an earlier disposition upon motion after notice and a hearing.**

### Comments

Edits are for style uniformity and clarity, and to correct the omission of the UST from the notice list.

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

### (a) Generally

Applications for compensation and reimbursement of expenses shall comply with the national fee guidelines promulgated by ~~of the Executive Office for United States Trustee-UST pursuant to~~ **under** 28 U.S.C. §586(a)(3)(A)(i) and ~~any the~~ Policy of the United States Trustee for Region 10 for Implementation of Fee Guidelines. Applications for compensation and reimbursement of expenses shall be filed separately for the trustee and each professional.

### (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.~~

#### (1) Traditional Fee Award Process

~~Counsel may decline to seek approval of compensation pursuant to these guidelines. If Counsel so declines, Compensation to an attorney representing a Chapter 13 Debtor ("Counsel") shall be disclosed, reviewed, and approved in accordance with~~ **under** applicable authority including, without limitation, 11 U.S.C. §§329 and 330 and Fed.R.Bankr.P. 2002, 2016, and 2017, **unless Counsel opts for the alternative award process in subparagraph 2 of this section.** ~~This authority requires, at a minimum, that payments on account of post petition services be held in trust until the Court approves the fees and expenses of the attorney.~~

(2) Streamlined or “No Look” Fee Award Process

Alternatively, Counsel may have fees ~~deemed approved~~ **awarded** and paid as part of the ~~Chapter 13 plan~~ **upon** confirmation process, **without filing a separate application**, if: they comply with the following guidelines:

- ~~(1) Counsel may seek approval for fees up to the amounts set forth in subparagraph (2) without filing a detailed application if:~~
- ~~(A) Counsel has filed an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,” available on the Court’s website;~~
  - ~~(B) no objection to the requested fees has been raised; and~~
  - ~~(C) **(B) Counsel has filed** a proof of claim ~~has been filed with the Court by Counsel~~ and served **that claim** upon the trustee; **and**~~
  - ~~(D) **(C) Counsel seeks no more than the maximum fee set by general order.**~~
- ~~(2) The maximum fee which can be approved through the procedure described in subparagraph (1) is set by general order.~~

(3) Supplemental Fees

**Counsel may apply for additional fees if Counsel opted for the fee award process set out in subparagraph (2), but later determines that the maximum fee is not sufficient. 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.**

- ~~(3) If Counsel does not wish to obtain approval of fees in accordance with these guidelines, if an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys” is not filed, if Counsel requests fees in excess of the amounts in section (2), or if there is an objection to use of these guidelines, fees will not be automatically approved upon plan confirmation pursuant to these guidelines. In such cases, Counsel must deposit all advance payment of post-petition fees in trust, must apply for all fees, and shall comply with 11 U.S.C. §§ 329 and 330 and Fed.R.Bankr.P. 2002, 2016, and 2017.~~

(4) Fees Upon Case Dismissal

**If Counsel has elected to be compensated pursuant to these guidelines **opted for the fee award process in subparagraph (2)** but the case is dismissed prior to confirmation of a plan, ~~absent contrary orders~~ **unless the Court orders otherwise**, 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 **of an allowed fee claim** 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 application **request** {within fourteen (14) days of the dismissal} for allowance and payment **an award** of additional fees **under subparagraph (3)**. 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.

- (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 subparagraph (b)(2) above is not sufficient to fully compensate counsel for the legal services rendered in the case, Counsel 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.~~

(5) Source of Fee Payment

Except for pre-petition retainers, all fees shall be paid through the plan ~~unless otherwise ordered. Absent Court authorization,~~ and Counsel may not receive fees directly from the Debtor other than the pre-petition retainer, **unless the Court orders otherwise**. After plan confirmation, the trustee shall pay Counsel until the fee is paid in full.

- (6) ~~If Counsel has elected to be compensated pursuant to these guidelines but the case is 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 application [within fourteen (14) days of the dismissal] 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.~~

(6) Review of Fees

On its own motion or the motion of ~~any~~ a party in interest at ~~any time~~ prior to entry of a final decree, the Court may order a hearing to review ~~any~~ a fee paid or to be paid.

Comments

Edits are for style uniformity and clarity.

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

A trustee who files a motion for turnover against the Debtor shall provide **a 21-day Objection Notice** to the Debtor(s), ~~counsel for the Debtor(s), if any,~~ the UST, and any committee ~~notice of the motion. That notice shall give twenty one (21) days from the date of service for the filing of any objection.~~ Along with the motion, the trustee 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 a sample combined motion for turnover, notice, and Certificate of Service of which~~ is available on the Court’s website.

## Comments

Edits are for style uniformity and clarity.

### **B-2081-2. PREPACKAGED CHAPTER 11 CASES**

(a) Definition

~~A “Prepackaged Chapter 11 Case” is a Chapter 11 case in which the Debtor, substantially contemporaneously with the filing of the Chapter 11 petition, files a Prepackaged Scheduling Motion, a proposed plan, a disclosure statement (or other solicitation document), and a voting certification with respect to votes solicited pre-petition that the Debtor contends may be counted to achieve confirmation of the proposed plan pursuant to 11 U.S.C. §1126(b).~~

(b) Scheduling Procedures

~~A Prepackaged Scheduling Motion shall be included under Local Rule B-9013-3(f) and treated as a First Day Motion under S.D. Ind. B-9013-3. If a Prepackaged Scheduling Motion is properly filed and served in accordance with Local Rule B-9013-3, the Court will consider expedited scheduling of a hearing on confirmation of a proposed “prepackaged plan” (without the prior approval of a disclosure statement) when confirmation of such a plan is supported by pre-petition acceptances of the proposed “prepackaged plan” in accordance with 11 U.S.C. §1126(b) and Fed. R. Bankr. P. 3018(b). To obtain such expedited scheduling, counsel for the Debtor shall contact the courtroom deputy for the Chief Judge.~~

If a Chapter 11 Debtor has solicited and obtained votes on a proposed plan before filing the case, and the Debtor seeks confirmation of that plan promptly after filing and without prior approval of a disclosure statement, the Debtor shall file a motion for authority as a "first day motion" under S.D.Ind. B-9013-3, seeking expedited scheduling of the confirmation hearing. If the motion seeking expedited scheduling is granted, the Debtor shall file as separate documents the proposed plan, the pre-petition solicitation document, and a report on voting.

## Comments

Given the infrequency of prepackaged Chapter 11 filings in the District, the procedure has been streamlined and simplified.

### **B-3001-1. PROOF OF CLAIM**

(a) Method of Filing

A proof of claim ~~may be filed non-electronically or electronically~~ and shall substantially conform to Official Forms 410, 410A, 410S1, and 410S2 available on the Court’s website. Registered users of CM/ECF shall file claims electronically. Entities ~~which are~~ not authorized or required to file documents electronically may file claims either on paper or

by using the Court's electronic proof of claim option ("ePOC/eWOC"), found on the Court's website, **and shall comply with S.D. Ind. B-5005-1(c).**

(b) Copies

~~Any entity filing a proof of claim non-electronically shall comply with S.D. Ind. B-5005-1(e).~~

(c) (b) Redaction of Personal Identifiers

~~Any~~ claimant shall redact, **all personal identifiers** on the proof of claim and ~~any~~ attached documents filed with the Clerk, ~~all personal identifiers~~ as required by Fed.R.Bankr.P. 9037.

(d) (c) Wage Claimant

A proof of claim for wages or salary shall include only the last four digits of the claimant's SSN or ITIN. The claimant shall provide the trustee or **the** Debtor the full SSN or ITIN and a telephone number.

Comments

Subparagraph (b) is dropped because instructions for non-electronic filing and return of a file-marked copy are found elsewhere in these Rules and in the Court's Procedures Manual.

**B-3002.1-1. ADDITIONAL NOTICE REQUIREMENTS FOR MORTGAGE LENDERS IN CHAPTER 13**

(a) Notices of Payment Change and of Fees, Expenses, and Charges

~~All~~ creditors with **a** claims secured by ~~a security interest in~~ real estate shall comply with ~~the requirements of~~ Fed.R.Bankr.P. 3002.1(b) and (c), ~~without regard to whether~~ **even if** the real estate is **not** the Debtor's principal residence.

(b) Motion to Determine Validity of Payment Change

**A party in interest who objects to the payment change may file a Motion to Determine Validity of Payment Change. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the Court orders otherwise.**

(c) Notice of Change in Servicer

If the mortgage servicer changes while the bankruptcy is pending, the mortgage holder shall file with the Court and serve upon the Debtor, ~~Debtor's counsel,~~ and the trustee a notice ~~setting forth the change and~~ providing the name of the servicer, the payment address, a contact phone number, and a contact email address.

Comments

Subsection (b) is new and is included to implement the new CM/ECF filing event added by the amendment to Fed.R.Bankr.P 3002.1(b)(2). Other edits are for style uniformity and clarity.

## **B-3002.1-2. NOTICE OF EXCEPTION TO FILING NOTICES OF PAYMENT CHANGE PURSUANT TO ~~UNDER~~ FED.R.BANKR.P. 3002.1(b)**

### (a) Eligibility for Use of Notice of Exception to Filing a Notice of Payment Change

A creditor may use the procedure ~~provided for by this local rule~~ in subparagraph (b) if:

- (1) the creditor asserts a claim secured by a security interest in the Debtor's real ~~property~~ **estate**;
- (2) ~~that claim is provided for in the plan~~ **the plan provides for the claim** under §1322(b)(5); and
- (3) the monthly amount due on the claim changes more than once every ~~sixty (60)~~ days because the creditor's agreement with the Debtor provides for a variable interest rate and/or a variable payment amount, or the creditor is eligible for the exception in subparagraph (e).

### (b) Filing and Effect of Filing Notice of Exception to Filing a Notice of Payment Change

~~If A creditor is eligible pursuant to~~ **under** subparagraph (a) ~~of this rule, then the creditor shall be excused from the requirements of Fed.R.Bankr.P. 3002.1(b), requiring filing of a notice of payment change twenty-one (21) days prior to the change, if the creditor files a Notice of Exception to Filing a Notice of Payment Change ("Notice of Exception") and serves that Notice of Exception on the trustee, the Debtor, and the UST. If no objection to the Notice of Exception is filed pursuant to~~ **under** subparagraph (c), or if the Court determines after objection that the exception should apply, then the creditor is excused from filing ~~any a~~ Notice of Payment Change other than a change resulting from a ~~variance~~ **change** in the interest rate.

### (c) Duty to Provide Information

~~A creditor subject to the exception shall provide to the Debtor and the trustee each month a statement in a customary form in accordance with applicable non-bankruptcy law that clearly identifies the payment amount due on the claim, and in addition.~~ The creditor shall provide to the trustee or the Debtor, upon request, an updated total amount due.

### (d) Objection

~~Any party in interest may object to the Notice of Exception or the monthly statement provided pursuant to subsection (c) of this rule within twenty-one (21) days after the Notice of Exception is filed or the monthly statement is served.~~

### (e) Limited Exception During Loan Modification Process

If the Debtor files a Motion to Approve Loss Mitigation Agreement, a Motion to Approve a Trial Modification Agreement, or a Motion to Modify Secured Debt (collectively, a "Modification Motion"), the creditor is excused from filing a Notice of Payment Change while that Modification Motion is pending. No later than ~~twenty-one (21)~~ days after the

date of the entry of an order approving the Modification Motion, a creditor shall file and serve on the trustee, the Debtor, and the UST a Notice of Payment Change.

#### Comments

Former subsection (d) is now subsection (c). Former subsection (c) is now subsection (d) and is amended to provide a mechanism for a party in interest to object to a monthly statement required to be served by a secured creditor under new subsection (c). Other edits are for style uniformity and clarity.

### **B-3002.1-3. MOTION FOR DETERMINATION OF FINAL CURE AND PAYMENT: HEARING DEEMED WAIVED**

If the trustee or the Debtor files a Motion for Determination of Final Cure and Payment pursuant to under Fed.R.Bankr.P. 3002.1(h), and the holder of the claim has filed a response that agrees with the previously filed Notice of Final Cure and Payment, or the holder of the claim files a Response to Notice of Final Cure Payment that concurs in the Motion for Determination, then the holder of the claim is deemed to have waived further notice and the Court may enter an order on the motion immediately without hearing.

#### Comments

Edits are for style uniformity and clarity.

### **B-3002.1-4. MOTIONS TO DEEM MORTGAGE CURRENT**

If the trustee is not required to file a Notice of Final Cure Payment pursuant to Fed.R.Bankr.P. 3002.1(f), a Chapter 13 Debtor may file a Motion to Deem Mortgage Current after all payments have been made pursuant to under the confirmed plan. The Chapter 13 Debtor shall provide the mortgage lender with a 21-day Objection Notice giving the lender twenty one (21) days from the date of service 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.

#### Comments

Edits are for style uniformity and clarity.

### **B-3006-1. WITHDRAWAL OF PROOF OF CLAIM**

A claimant who files a motion to withdraw a proof of claim shall provide the Debtor, any a trustee, any a creditors' committee, the UST, and any an entity that objected to the claim a 21-day Objection Notice of the motion. That notice shall give twenty one (21) days from the date of service for the filing of any objection. Along with the motion, the claimant 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 combined motion to withdraw, notice, and Certificate of Service of which is available on the Court's website.

Comments

Edits are for style uniformity and clarity.

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

(a) Notice

~~Any objection~~ **A party that objects** to a claim **shall provide a** ~~and the~~ **30-day Objection Notice of that objection shall be served by the movant on** ~~to~~ the claimant(s) to whom the objection is directed, the Debtor, ~~any~~ **a** trustee, and the UST. ~~The notice shall allow thirty (30) days from the date of service for parties to file a response to the objection.~~ **Along with the objection, the objector shall file the notice and a Certificate of Service. The objection, notice, and Certificate of Service may be combined into one document, a sample of which is available on the Court's website.**

(b) 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 objection, notice, and certificate of service may be combined into one document. A sample 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.~~

Comments

Edits are for style uniformity and clarity.

**B-3010-1. SMALL DIVIDENDS AND PAYMENTS**

Trustees in Chapters 7, 12, and 13 cases are authorized to distribute dividends and payments to creditors in any amount, ~~and need not hold such funds or deposit them with the Court.~~

Comments

Edits are for style uniformity and clarity.

**B-3011-1. UNCLAIMED FUNDS**

**An** applications for payment of unclaimed funds shall comply with instructions from and be submitted on forms made available ~~by the Clerk~~ **on the Court's website.**

Comments

Edits are for style uniformity and clarity.

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

(a) Form of Plan

As permitted by Fed.R.Bankr.P. 3015.1, The Court has adopted a Local Form for the Chapter 13 plan (“~~the~~ Local Form Plan”) which ~~shall be used instead of Official Form 113 as permitted by Fed.R.Bankr.P. 3015.1.~~ Chapter 13 plans and amended plans ~~The Debtor~~ shall use the Local Form Plan, which is available on the Court’s website or from the Bankruptcy Clerk.

(b) Extension of Time to File Plan

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

(c) Pre-confirmation Payments as Adequate Protection

Unless the Court orders otherwise for claims secured by personal property, “adequate protection” under 11 U.S.C. §1326(a)(1)(C) shall be paid by the Debtor to the trustee, as a portion of the payment made under 11 U.S.C. §1326(a)(1), in an amount equal to 1% of the allowed secured claim. Such amount shall be presumed to constitute adequate protection although that presumption may be rebutted. The trustee shall disburse adequate protection payments to the secured creditor as soon as practicable. All adequate protection payments shall be subject to the trustee’s percentage fee.

(d) Payment of Pre-Petition Arrearage through Trustee

~~If there is a~~ The Debtor shall pay ~~any a~~ pre-petition arrearage claim on a mortgage secured by the Debtor’s residential real property estate, ~~then both the payment of the pre-petition arrearage and~~ along with the post-petition mortgage installments, shall be made through the Chapter 13 Trustee. ~~Such~~ These disbursements shall be subject to the trustee’s percentage fee as set by the USTF.

(e) 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. If service of the plan other than by first-class mail is required by Fed.R.Bankr.P. 3012 or 4003, ~~then~~ the trustee may require the Debtors to distribute the plan to that entity and provide proof of service to the trustee. The Debtors shall distribute ~~any a~~ third amended or subsequent plan and ~~any~~ related notice, and file a Certificate of Service that complies with S.D.Ind. B-9013-2.

### Comments

Most edits are for style uniformity and clarity. New subparagraph (c) is relocated from B-3015-3 as the subparagraph concerns plan language.

## **B-3015-2. 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 **plan** 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 agreed modification ~~not requiring notice~~. Notice to creditors of the modification is not required. ~~Any such agreement will not result in a separate order,~~ **The Court will not approve the agreement by separate order,** as the **agreement is deemed approved by 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 **plan** modification ~~to the plan~~ before confirmation that does not adversely affect the treatment of ~~any a~~ creditor, ~~then~~ the parties shall file an agreed modification ~~not requiring notice~~. Notice to creditors of the ~~agreement~~ **modification** is not required. ~~Any such agreement will not result in a separate order,~~ **The Court will not approve the modification by separate order,** as the **modification is deemed approved by the** subsequent confirmation order ~~will be deemed an approval of the plan as modified by agreement.~~

#### (3) Other Pre-Confirmation Modifications

~~Any A~~ **A** pre-confirmation modification that affects the treatment of creditors that have not agreed to the modification requires the filing of an amended plan which ~~the Trustee or the Debtor shall distribute~~ **be distributed by the trustee or the Debtor pursuant to** ~~under~~ **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 movant shall distribute notice of the filing and ~~of any hearing or~~ **the** deadline for objections and shall file a **Certificate of Service** ~~that complies with S.D. Ind. B-9013-2.~~

### Comments

Edits are for style uniformity and clarity.

## **B-3015-3. ~~PRE-CONFIRMATION PAYMENTS AND CONFIRMATION~~ HEARINGS**

### (a) Pre-confirmation Payments as Adequate Protection

~~In Chapter 13 cases, unless otherwise ordered, for secured claims other than those asserting a lien on real estate, “adequate protection” under 11 U.S.C. §1326(a)(1)(C) shall be paid by~~

~~the Debtor directly to the trustee, as a portion of the payment made under 11 U.S.C. §1326(a)(1), in an amount equal to one percent (1%) of the secured creditor's allowed secured claim. Such amount shall be presumed to constitute adequate protection although that presumption may be rebutted. The trustee shall disburse adequate protection payments to the secured creditor as soon as practicable after receiving them from the Debtor. All adequate protection payments shall be subject to the trustee's percentage fee.~~

(b) Confirmation Hearings

~~Consistent with 11 U.S.C. §1324(b),~~ Absent a contrary order or objection, it is in the best interests of creditors and the bankruptcy estate to hold a confirmation hearing, prior to ~~twenty-eight (28)~~ days after the objection is filed.

Comments

Edits are for style uniformity and clarity. Former subparagraph (a) is relocated to S.D. Ind. B-3015-1(c) as the subparagraph concerns plan language.

## **B-3015-4. DISTRIBUTION OF CHAPTER 12 PLANS**

The Debtor in a Chapter 12 case shall distribute ~~any~~ a plan, amended plan, or motion to modify a plan, and ~~any~~ related notice, and shall file a Certificate of Service ~~that complies with S.D.Ind. B-9013-2.~~

Comments

Edits are for style uniformity and clarity.

## **B-3017-2. CONSIDERATION OF DISCLOSURE STATEMENTS IN SMALL BUSINESS CASES AND CONFIRMATION DEADLINES**

(a) Expedited Processing of Disclosure Statement

If the proponent of a plan in a small business case ~~would like~~ requests that the Court to:

\*\*\*\*\*

the proponent shall file a notice ~~at the same time as~~ along with the proposed plan or disclosure statement is filed. Such The notice shall state specify, with particularity, why a separate disclosure statement is not needed, why a separate hearing to consider the adequacy of a disclosure statement is not necessary, or why the filing of the plan should be deferred the relief requested is appropriate. A sample notice form is available on the Court's website.

(b) Absence of Notice Results in Hearing

~~Absent a notice submitted in accordance with subparagraph (a), the Court will schedule the case for such proceedings as it deems appropriate.~~

(c) (b) Deadlines

At any ~~the~~ hearing where the Court is to consider the adequacy of a proposed disclosure statement on a request under subparagraph (a) the Court may also, either on its own initiative or at the request of a party in interest, consider whether any applicable deadline for confirming a proposed plan should be extended.

Comments

Edits are for style uniformity and clarity. Subparagraph (b) is removed because it states the obvious.

**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 after the approval or conditional approval of the disclosures statement or determination that a disclosure statement is not needed, the party filing the plan (the “Plan Proponent”) shall distribute copies of the plan, the disclosure statement [unless none is required under 11 U.S.C. §1125(f)(1)], and ballot(s), and notice of the confirmation hearing 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 thereafter after the approval or conditional approval of the disclosure statement a Certificate of Service that complies with S.D. Ind. B-9013-2.~~

(b) Form of Ballot

~~Unless the Court has approved a different ballot form, The Plan Proponent shall use the ballot form of a ballot available on the Court’s website, unless the Court has approved a different ballot form. The ballot shall be distributed to creditors, shall include the address of the Plan Proponent or the party designated to receive ballots, and shall indicate that ballots should must be received no later than the deadline established by order of the Court.~~

(c) Submission of Ballots and Balloting Report

(1) Delivery and Retention of Ballots

~~Except as otherwise ordered and as provided in S.D. Ind. B-1007-2, All ballots shall be delivered returned to the Plan Proponent, unless the Court orders otherwise. The Clerk shall forward Any original ballots received by the Clerk shall be forwarded to the Plan Proponent. The Plan Proponent shall establish an appropriate method for noting the date the ballot was received note the receipt date on each ballot. Unless otherwise ordered by the Court, The Plan Proponent shall retain copies of the ballots in accordance with the Electronic Case Filing Administrative Policies and Procedures Manual, unless the Court orders otherwise.~~

(2) Tabulation, Report, and Certification

The Plan Proponent shall ~~tabulate the ballots and prepare~~ **file** a balloting report, **certified as to accuracy, that lists** ~~The tabulation shall list~~, for each class; the total number of claims voting, total dollar amount of claims accepting, and percentages of claims voting that accept the plan. The report shall also ~~indicate~~ **state**, for each class, whether it is impaired or unimpaired and whether ~~or not~~ the requisite vote has been attained in each class. A sample **certified** report form is available on the Court's website. ~~The balloting report form shall be certified by the Plan Proponent. A sample certification form is available on the Court's website.~~

(3) Filing and Service

The **Plan Proponent shall file the certified** ~~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 distributed to the UST, the Service List, and parties filing objections to the plan.

Form of Ballot

~~Unless a different ballot form has been approved by the Court, the Plan Proponent shall use the form of a ballot available on the Court's website. The ballot shall be distributed to creditors, shall include the address of the Plan Proponent or the party designated to receive ballots, and shall indicate that ballots should be received no later than the deadline established by order of the Court.~~

(d) Rules for Tabulating Ballots

~~In tabulating the ballots, the following rules shall apply:~~

- ~~(1) — Ballots that are not signed will not be counted either as an acceptance or rejection.~~
- ~~(2) — Where the amount shown as owed on the ballot differs from the schedules, the amount shown on the schedules or, if a proof of claim has been filed and allowed or deemed allowed, the amount shown on the proof of claim will be used for the purpose of determining the amount voting unless the Court orders otherwise.~~
- ~~(3) — Unless the Court orders otherwise, ballots that do not show a choice of either acceptance or rejection will not be counted either as an acceptance or rejection.~~
- ~~(4) — Unless the Court orders otherwise, ballots that are received after the last date set for filing ballots will not be counted as either an acceptance or rejection.~~

Comments

Most edits are for style uniformity and clarity. Subparagraph (d) is dropped as it seems to make legal determinations as to the tabulation process, which are not appropriate in a local rule.

## **B-3022-1. FINAL DECREE IN CHAPTER 11 CASES WHERE **THE** 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~~ **apply** for a final decree. The application shall include the percentage paid or proposed to be paid to general unsecured creditors ~~in the plan~~.

### Comments

Edits are for style uniformity and clarity.

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

### (a) 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~~ **apply** for a final decree. The application for ~~final decree~~ shall include 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~~.

### (b) Request for **Hardship** Discharge under 11 U.S.C. §1141(d)(5)(B)

If ~~the Debtor seeks~~ a discharge ~~is sought~~ under 11 U.S.C. §1141(d)(5)(B), the Debtor shall ~~request entry of~~ **file a Motion for Hardship Discharge** ~~by filing a motion for discharge,~~ which shall be a contested matter governed by Fed.R.Bankr.P. 9014. If the motion is granted, and if the Debtor is otherwise eligible, the Clerk shall issue the discharge and the final decree, and close the case.

### (c) Closing Case Before Plan Payments Completed

If the Debtor ~~proposes~~ **wishes** to close the case ~~before plan payments have been completed~~ **pending completion of the plan**, and intends to reopen the case after plan completion to obtain a discharge, then the Debtor shall **must** file a **Motion to Close the Chapter 11 Case** and **that** include in that motion a statement of the Debtor's intent to reopen **states an intention to reopen the case upon plan completion**. If such documentation is provided **the motion is granted**, the Clerk shall not issue ~~the~~ a Notice of No Discharge as **otherwise** required by Fed.R.Bankr.P. 4006 ~~or the final decree at the time the case is closed~~. Upon the ~~filing of a motion to reopen~~ **After completion of the plan and the reopening of the case**, the Debtor shall be required to pay any fees due for reopening the case. After reopening, the Debtor shall file the Application for Final Decree and supporting ~~documentation~~ **documents** as required in subparagraph (a).

### Comments

Subparagraph (b) on hardship discharge is edited to match B-4004-1(e) on hardship discharge under Chapters 12 and 13. Other edits are for style uniformity and clarity.

## B-3070-1. WAGE ASSIGNMENT ORDERS IN CHAPTER 13 CASES

(a) Trustee’s Authority to Require Wage Assignment Order

~~Under 11 USC §1325(e),~~ The Chapter 13 Trustee may, ~~in any case in which he or she has been appointed,~~ at any time request an order directing the Debtor’s employer to remit ~~funds needed to fund the plan~~ **payments.**

(b) Procedure

The trustee may:

- (1) submit an order (“the “Wage Assignment Order” or “Order to Pay”) directing a Debtor’s employer to remit to the trustee the payment stated in **the** Debtor’s plan (– including amended plans and motions for post-confirmation modification) – or in a confirmation order; or
- ~~(2) —~~ **notify require** the Debtor’s counsel or, if *pro se*, the Debtor, that he or she is to submit the Wage Assignment Order **within 7 days.** ~~Such notice shall be provided in writing, or orally at the Meeting of Creditors.~~

(c) Effect of Failure to Provide Order

~~If the Chapter 13 Trustee proceeds under subparagraph (b)(2), then the Debtor’s counsel or Debtor shall submit such an order to the Court within seven (7) days of the notice from the trustee. Failure to do so is, in itself, grounds for the trustee to move to dismiss the case.~~

(d) **(c)** Service of Orders

The party who tendered the order shall serve a copy of the signed order on the entity to which the order is directed, the trustee, and the Debtor.

(e) **(d)** Amended Orders Required

~~Debtor or Debtor’s counsel must advise the Chapter 13 Trustee if the Debtor’s employer changes before plan payments have been completed. If the Chapter 13 Trustee has given notice that the Debtor’s counsel or *pro se* Debtor should~~ **Debtor was required to** submit a Wage Assignment Order, the order shall remain effective ~~that obligation continues~~ throughout the case, unless rescinded ~~by the Chapter 13 Trustee.~~ **The Debtor or Debtor’s counsel must submit a new order whenever the Debtor’s employer or the plan payment changes, until plan payments have been completed. After plan payments have been completed, an order terminating wage assignment shall be submitted.**

### Comments

Edits are for style uniformity and clarity, and to reflect actual practice.

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

### (a) Relief from Stay or Co-Debtor Stay

#### (1) Contents of Motion

A motion for relief from the automatic stay or relief from the stay as to a co-debtor pursuant to **under** 11 U.S.C. §1301 shall include the following ~~information to the extent~~ **if** applicable:

\*\*\*\*\*

- (C) documents upon which the movant relies to establish its lien or security interest, ~~(or incorporate by reference the movant's proof of claim if documentation attached);~~

\*\*\*\*\*

- (E) **a post-petition payment history** if the case is pending under Chapter 13 and a post-petition default is alleged, ~~a post-petition payment history;~~ and
- (F) **the name of the co-debtor** if the motion seeks relief from the co-debtor stay, ~~the name of the co-debtor.~~

#### (2) Waiver of ~~Thirty (30)~~ Day Hearing Requirement

The motion may include a waiver of the ~~thirty (30)~~ day hearing requirement in 11 U.S.C. §362(e). The movant shall note that waiver in the motion's caption by including the statement "with 30-day waiver." Selection of the waiver option when filing the motion electronically also results in a waiver of the ~~thirty (30)~~ day hearing requirement in 11 U.S.C. §362(e).

#### (3) Notice and Disposition

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

~~In cases pending under any chapter~~ **Except in Chapter 11 cases,** notice of the ~~motion~~ **movant** shall:

- (i) **distribute a 14-day** Notice of the motion ~~shall be distributed by the movant~~ to the Debtor, parties that have entered an appearance, **any a** trustee, **and** the UST, and **any a co-debtor in a Chapter 12 or 13 case,** except as otherwise provided by S.D.Ind. B-2002-1(c); ~~in a Chapter 12 or a Chapter 13 case, notice shall also be served on any co-debtor.~~
- (ii) **if** the motion also seeks abandonment, **distribute** notice ~~must be distributed~~ to all creditors and parties in interest, **unless notice has been limited under B-2002-1(c) or (d); and** ~~The notice shall allow fourteen (14) days from the date of service to file objections. Along with the notice, the moving party shall~~

- (iii) file a copy of the motion and a Certificate of Service that complies with S.D.Ind. B-9013-2. A sample notice is available on 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~~ a hearing on the motion the Debtor or objecting party has the burden of establishing ~~any~~ payment(s) 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 ~~shall~~: ~~should~~

- (i) contact the courtroom deputy to discuss who will prepare and distribute the notice and ~~obtain a hearing date, if needed; determine if a hearing is needed. Hearing date and time will be provided by the courtroom deputy.~~
- (ii) ~~Notice of the motion shall be distributed~~ the notice to the Debtor, parties that have entered an appearance, ~~any~~ a creditors' committee or if no committee has been appointed, the twenty largest unsecured creditors, ~~any~~ a trustee, and the UST;
- (iii) if the motion also seeks abandonment, ~~distribute the notice must be distributed to all creditors and parties in interest; and~~
- (iv) ~~After distribution, the movant shall file a Certificate of Service that complies with S.D.Ind. B-9013-2. The Certificate of Service must be filed prior to the Court setting any a hearing the Court has set on the motion.~~

(4) Sample Motion Form

~~A sample motion is available on the Court's website. The motion, notice, and Certificate of Service may be combined with the notice required by subparagraph (a)(4) into one document, a sample of which is available on the Court's website.~~

(b) Extend or Impose the Stay

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

- (A) The Court shall set the motion will be set for hearing, and issue 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 Petition Date

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- (D) The movant shall file a Certificate of Service that complies with S.D.Ind. B-9013-2 on or before the hearing date.

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Comments

Edits are for style uniformity and clarity.

**B-4001-2. MOTIONS TO USE CASH COLLATERAL AND TO OBTAIN CREDIT**

Comments

Style and other edits shall be proposed in 2019.

**B-4001-3. OBTAINING CREDIT IN CHAPTER 13 CASES**

Comments

Style and other edits shall be proposed in 2019.

**B-4001-4. MOTIONS TO MODIFY SECURED DEBT: MORTGAGES**

In a Chapter 13 case, ~~if a debt secured by real estate is modified~~, the Debtor shall file a Motion to Modify Secured Debt **to obtain approval of a modification of a debt secured by real estate**. ~~Any such motion shall~~ **that** includes 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, whether the payment will be made by the trustee or paid directly by the Debtor, and the maturity date of the proposed modified note. A sample motion is available on the Court's website.

Comments

Edits are for style uniformity and clarity.

**B-4002-1. THE DEBTOR'S DUTIES**

Comments

Style and other edits shall be proposed in 2019.

## B-4003-2. LIEN AVOIDANCE MOTIONS PURSUANT TO ~~UNDER~~ §522(f)

### (a) Requirements

Any Debtor seeking to avoid a lien pursuant to ~~under~~ 11 U.S.C. §522(f) shall file a separate ~~written~~ motion as to each ~~alleged~~ lien holder. ~~The motion may be combined with the notice required by subparagraph (d) and the certificate of service that complies with S.D.Ind. B-9013-2. A sample notice, motion, and certificate of service are available on the Court's website. The motion shall identify:~~

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- (4) the lien to be avoided and its approximate amount; ~~and~~
- (5) ~~if lien avoidance is sought as to real property estate~~ the motion seeks to avoid a judicial lien, the case number and the court where the underlying judgment was entered, the date of the judgment, and the common address and legal description of that property ~~the real estate;~~ and
- (6) ~~if the motion seeks to avoid a nonpossessory, nonpurchase money security interest in household goods under 11 U.S.C. §522(f)(1)(B), the household goods subject to the security interest sought to be avoided, referring to the definition of "household goods" provided in 11 U.S.C. §522(f)(4), and the date the debt that the lien secures was incurred.~~

### (b) Judicial Liens: Additional Requirements

~~In addition to the information required by subparagraph (a), motions to avoid judicial liens shall also include:~~

- (1) ~~the case number and the court where the underlying judgment was entered; and~~
- (2) ~~the date of the judgment.~~

### (c) Nonpossessory, Nonpurchase Money Security Interests in Household Goods: Additional Requirements

~~In addition to the information required by subparagraph (a), motions to avoid a nonpossessory, nonpurchase money security interest in household goods under 11 U.S.C. §522(f)(1)(B) shall also:~~

- (1) ~~specifically identify the household goods that are subject to the security interest sought to be avoided, referring to the definition of "household goods" provided in 11 U.S.C. §522(f)(4); and~~
- (2) ~~state the date the debt that the lien secures was incurred.~~

### (d) (b) Service, and Notice, and Filing

The Debtor shall serve the motion and a 21-day Objection Notice thereof on the lien holder, in accordance with Fed.R.Bankr.P. 9014(b) 4003(d) and 7004. ~~The notice shall~~

allow at least twenty one (21) days from the date of service to file objections. Along with the motion and notice, the Debtor shall file a Certificate of Service. The motion, notice, and Certificate of Service may be combined into one document, a sample of which is available on the Court's website.

(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. B-9013-2.

(f) (c) Orders

An order avoiding a lien on real estate shall include both the common address and a legal description of that the real estate.

Comments

Most edits are for style uniformity and clarity. Several subparagraphs have been combined.

**B-4003-3. STRIPPING AVOIDING UNSECURED MORTGAGES IN CHAPTER 13 CASES**

(a) Adversary Proceeding Required

Any Debtor seeking to strip avoid an unsecured mortgage in a Chapter 13 case shall file a separate adversary proceeding as to each lien holder. In addition to any other required allegations, the complaint shall identify:

- (1) the mortgage to be avoided and its approximate amount;
- (2) the other mortgages and liens on the property real estate which the Debtor asserts have higher priority than the mortgage to be avoided, and the amount —listed separately— of owed on those mortgages and liens, listed separately;
- (3) the value of the property real estate; and
- (4) the common address and legal description of the property real estate.

(b) Proposed Judgment

A proposed judgment tendered by The Debtor shall tender a proposed judgment that includes both the common address and the legal description of the property real estate.

Comments

Edits are for style uniformity and clarity.

## **B-4004-1. DISCHARGE IN **INDIVIDUAL** 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 Plan Completion after all payments have been received. Sample forms are available on the Court's website.

(b) The 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 Discharge and a Certification of Eligibility for 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 Discharge and a Certification of Eligibility for Discharge on the trustee and ~~any an~~ entity to whom the Debtor owes a domestic support obligation. The trustee shall have ~~twenty-one (21)~~ days from the date of filing to object to the Motion or the Certification. ~~If the Debtor owes a domestic support obligation, the Debtor shall distribute to the holder of that obligation a notice giving the holder twenty-one (21) days from the date of service to file an objection to the entry of discharge.~~ **The Debtor shall serve a 21-day Objection Notice on the holder of a domestic support obligation.** A sample notice is available on the Court's website. The Debtor shall file a **Certificate of Service** as to the notice ~~that complies with S.D.Ind. B-9013-2.~~

(d) Closing and Reopening

If no motion for entry of discharge is filed, the case may be closed without entry of a discharge after filing of the trustee's final report. ~~If the motion for entry of discharge is filed after the case has been closed, the Debtor must also first file a motion to reopen the case. A filing fee to reopen the case must be paid with the motion.~~

(e) Request for Hardship Discharge

If the Debtor seeks a discharge ~~pursuant to~~ **under** 11 U.S.C. §§1228(b) or 1328(b), ~~then~~ the Debtor shall file a Motion for Hardship Discharge and a Certification of Eligibility for Discharge. A sample Certification is available on the Court's website. The Debtor shall serve the Motion for Hardship Discharge and the Certification of Eligibility for Discharge as required by subparagraph (c).

### Comments

Subparagraph (e) on hardship discharge is edited to match B-3022-2(b) on hardship discharges in Chapter 11. Other edits are for style uniformity and clarity.

## **B-4004-2. OBTAINING DISCHARGE AFTER CASE CLOSED WITHOUT DISCHARGE FOR FAILURE TO FILE FINANCIAL MANAGEMENT REPORT**

A Debtor may file a motion to reopen a case ~~in order~~ to obtain a discharge after **entry of** a Notice of No Discharge where the discharge was not entered ~~solely~~ because the Debtor failed to file a statement regarding completion of a course in personal financial management ~~pursuant to~~ **under** Fed.R.Bankr.P. 1007(b)(7) and (c). ~~In order for the motion to reopen to be granted,~~ The Debtor must pay the fee due to reopen the case and, contemporaneously with the Motion to Reopen, file the required statement of completion using ~~the appropriate~~ Official Form 423.

### Comments

Edits are for style uniformity and clarity.

## **B-4004-3. MODIFICATION OF DEADLINE FOR OBJECTIONS TO DISCHARGE**

The deadlines ~~set pursuant to~~ **under** Fed.R.Bankr.P. 4004(a) for filing a complaint or motion objecting to discharge under §727, and for filing a motion objecting to discharge under §1328(f), are modified ~~in the following circumstances~~ **as follows:**

(a) Meeting of Creditors Untimely Noticed

~~If service of the §341 or post conversion meeting notice is not timely provided pursuant to Fed.R.Bankr.P. 2002(a), and as a result of this failure to provide notice the §341 meeting must be rescheduled before another notice can be served, the deadline for objecting to discharge under §§ 727(a) or 1328(f) shall be sixty (60) days after the rescheduled date of the §341 meeting.~~

(a) Case Dismissed and Reinstated

If a case is dismissed prior to the expiration of the deadline for objecting to discharge and subsequently reinstated:

- (1) in a case dismissed before the **§341 Meeting of Creditors** is held, the new deadline for objecting to discharge under §§727 or 1328(f) shall be ~~sixty (60)~~ days after the rescheduled **§341 Meeting of Creditors**; or
- (2) in a case dismissed after the **§341 Meeting of Creditors** is held, the new deadline for objecting to discharge under §§727 or 1328(f) shall be ~~sixty (60)~~ days from entry of the order reinstating the case.

(b) Notice of New Deadline

The Clerk shall provide notice of new deadlines established under this rule.

## Comments

Subparagraph (a) is dropped in response to concerns of the Circuit. Other edits are for style uniformity and clarity.

### **B-4007-1. MODIFICATION OF DEADLINE FOR OBJECTING TO DISCHARGEABILITY OF A DEBT**

The deadline set pursuant to ~~under~~ Bankruptcy Rule 4007(c); for filing a complaint objecting to dischargeability of a debt is modified in the following circumstances:

(a) Meeting of Creditors Untimely Noticed

~~If service of the §341 or post conversion meeting notice is not timely provided pursuant to Fed.R.Bankr.P. 2002(a), and as a result of this failure to provide notice the §341 meeting must be rescheduled before another notice can be served, the deadline for filing objections to dischargeability of a debt shall be sixty (60) days after the rescheduled date of the §341 meeting.~~

(a) Case Dismissed and Reinstated

If a case is dismissed prior to the expiration of the deadline for objecting to dischargeability and subsequently reinstated:

- (1) in a case dismissed before the ~~§341~~ **Meeting of Creditors** is held, the new deadline for filing objections to dischargeability shall be ~~sixty (60)~~ days after the rescheduled ~~§341~~ **Meeting of Creditors**, and the Clerk shall serve a new ~~§341~~ **Meeting of Creditors** notice which notifies all creditors of the deadline; or
- (2) in a case dismissed after the ~~§341~~ **Meeting of Creditors** is held, the new deadline for filing objections to dischargeability shall be ~~sixty (60)~~ days from entry of the order reinstating the case.

(b) Notice of New Deadline

The Clerk shall provide notice of ~~any~~ new deadlines established under this rule.

## Comments

Subparagraph (a) is dropped in response to concerns of the Circuit. Other edits are for style uniformity and clarity.

## **B-4008-1. REAFFIRMATION**

(a) Official Bankruptcy Forms Required

Reaffirmation agreements shall be filed using the Administrative Office of the U.S. Courts Director's Procedural Forms for reaffirmation agreements (2400A or 2400A/B Alt.), as well as the cover sheet (Official Form 427). Failure to use these required forms will result in a notice of deficient filing, and the Court will take no action on the reaffirmation agreement.

(b) The Debtor's Appearance Required

If the Court sets a hearing to consider a reaffirmation agreement, the Debtor ~~must~~ **shall** appear at the hearing. The hearing will be evidentiary.

(c) Duties of **the** Debtor's Counsel

Unless the attorney has withdrawn as attorney for the Debtor ~~pursuant to~~ **under** S.D.Ind. B-L.R. 9010-1, an attorney who files a petition on behalf of a Debtor (or an attorney in the same firm as the filing attorney) ~~must~~ **shall** represent the Debtor during the negotiation and filing of ~~any a~~ **a** reaffirmation agreement(s), and appear at ~~any a related~~ **hearings on** reaffirmation agreements.

Comments

Edits are for style uniformity and clarity.

## **B-5005-1. FILING OF DOCUMENTS: GENERAL REQUIREMENTS**

(a) Method of Filing

~~Except as provided by S.D. Ind. B-5005-4 and the Electronic Case Filing Administrative Policies and Procedures Manual (available on the Court's website), all attorneys, and any other~~ **An** entity that filed more than ~~ten (10)~~ documents on paper in the previous calendar year ~~are~~ **is** required to file electronically. ~~All other parties~~ **A party not represented by counsel** may file documents on paper.

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Comments

Edits to Fed.R.Bankr.P. 5005 eliminate the need for the opening clause in the local rule.

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

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

(1) Movant's Obligations

If a party files a motion to dismiss pursuant to ~~pursuant to~~ under 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 **supporting** 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)~~ **21** days after the movant serves the motion and ~~any~~ a brief to file and serve a response and a brief, **unless the movant is entitled to and first files an amended pleading as a matter of course under Fed.R.Civ.P. 15(a)(1)**. 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 **so** 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 ~~Pursuant to~~ under 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)~~ **21** days after the movant serves the motion to file and serve a response. If no response is filed, the Court shall consider the motion.

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### Comments

The proposed edits to subparagraph (a)(2) are prompted by changes to District Court's rule 7-1 covering the same subject matter. Sometimes a response to a motion to dismiss can be the filing of an amended complaint, which moots the motion to dismiss. The change to a 21-day objection period also aligns with the District Court rule. Other edits are for style uniformity and clarity.

## **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

- (1) ~~Any~~ **The proposed** dismissal, whether by notice, motion, or stipulation, of a complaint to deny or revoke the Debtor's discharge ~~pursuant to~~ **under** 11 U.S.C. §727, shall be served upon the UST, ~~any~~ **a** trustee, counsel of record, and ~~any~~ **a** party that has intervened in the adversary proceeding ~~pursuant to~~ **under** 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~~ **an** 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-eight (28)~~ days following service of the **notice, or stipulation**, 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

Subparagraph (b) is amended to clarify that other parties should be notified of the proposed dismissal in all circumstances, even if dismissal is to be accomplished by stipulation or notice. Other edits are for style uniformity and clarity.

## **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~~, **or overnight 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~~ **a** 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 parties** 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 parties** as directed by the Court.

(2) Permissibility of Service by Overnight Delivery

~~Service by overnight delivery is acceptable if sent at least forty-eight (48) hours before any deadline or hearing in the notice.~~

Comments

Proposed edits clarify when overnight delivery of first day pleadings is appropriate. Other edits are for style uniformity and clarity.

**B-9010-2. SUBSTITUTION AND WITHDRAWAL OF APPEARANCE**

(a) Substitution

If a party in an adversary proceeding or a Debtor in ~~any~~ a case wishes to substitute attorneys, a substitution of appearance signed by the original attorney and the substituted attorney shall be filed. If a trustee, a Debtor, or official committee wishes to substitute attorneys or ~~any other~~ another professional whose employment was subject to approval by the Court, an application to employ the new professional must also be filed. If the attorney being replaced is unavailable to sign the substitution of appearance, the substituted attorney ~~or the Debtor~~ shall include an affidavit stating the reasons for the unavailability.

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Comments

Subparagraph (a) is edited to clarify that the debtor can execute the required affidavit concerning the unavailability of original counsel. Other edits are for style uniformity and clarity.

**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~~ a 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~~, or overnight 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. B-9013-2~~. Failure to give timely notice may result in relief being denied or the hearing continued.

## Comments

Proposed edits clarify when overnight delivery of first day pleadings is appropriate. Other edits are for style uniformity and clarity.