

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**LOCAL RULES UPDATES
FOR PUBLIC COMMENT**

The Court is proposing updates to several of the local rules. These updates are intended to clarify a few rules; to correct minor variances between the rules and actual practice; and to move more general orders into the local rules.

One substantive change is the requirement that counsel representing debtors who get authority to pay their filing fees in installments must pay those fees electronically, unless the Court has approved a non-standard payment schedule. See B-1006-1.

The proposed changes are attached to this notice. Comments can be made by sending an email to Local_Rules_Comments@insb.uscourts.gov . Deadline for comments is Monday, July 29th.

July 9, 2013

/s/ Kevin P. Dempsey
Clerk

PROPOSED LOCAL RULES EDITS – JULY 2013

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

(e) Requirement to Pay Installments Electronically

Unless the Court has authorized payment of fees in amounts other than as required in subparagraph (b), if the debtor is represented by counsel then counsel shall pay all fee installments electronically.

Comments

A check delivered to the Clerk's office must be put through a five-step process and be handled by at least three different people. Electronic payment is significantly more efficient. The vast majority of attorneys pay their clients' installments electronically. The Judges have decided to require all attorneys to do so – unless the order authorizing installment fees provided for installment amounts different than those in the general order. [At this time, non-standard amounts cannot be paid electronically.]

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

(c) Extensions of Time

(1) Motions Generally

Any motion for an extension of time to file the initial lists, schedules, statements and other documents required to commence a new case shall **may** be treated by the Court as a request for the maximum allowable extension of time for each applicable chapter and the Clerk will provide notice of the opportunity to object except as described in subparagraphs (2) and (3) below.

(2) Presumption of No Objection

Unless the Debtor is a "small business" filing under Chapter 11, as defined by 11 U.S.C. §101(51D), the UST and any trustee appointed in a case are deemed to have no objection to any original request for extension of time within which to file schedules or related documents if that request seeks an extension to no more than forty-five (45) days after the date the petition is filed. If the Debtor is a small business filing under Chapter 11, then the UST is deemed to have no objection to any original request for an

extension of time within which to file schedules or related documents if that request seeks an extension to no more than thirty (30) days after the date the petition is filed.

(3) 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

The rule is edited to reflect actual practice: sometimes when a date certain for extension is sought, the Court enters that order rather than giving last date possible.

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

(b) Manner of Joint Administration.

(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, and the caption of these documents shall have the name and case number of the Member Case:

(A) schedules, statements of financial affairs, and amendments thereto;

(B) In Chapter 11 cases, plans and disclosure statements and objections or other pleadings related thereto, and ballot reports;

(C) trustee final reports and accounts and related notices.

Comments

Rule inadvertently omitted trustee final reports and accounts, which should be filed in each separate case.

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

(a) Trustee's Authority to Require Wage Assignment Order.

Under 11 USC §1325(c), 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.

(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 debtor's plan (including amended plans and motions for post-confirmation modification) or in a confirmation order; or

(2) Notify the debtor's counsel or, if pro se, the debtor, that he or she is to submit the Wage Assignment Order. 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) 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) 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 submit a Wage Assignment Order, that obligation continues throughout the case, unless rescinded by the Chapter 13 Trustee. Debtor or debtor's counsel must submit a new order whenever the debtor's employer or the plan payment changes.

Comments

This is General Order 09-0004, brought into the local rules – with an additional subparagraph concerning order distribution.

B-5005-1. FILING OF PAPERS: 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), which requires electronic filing by attorneys and certain limited users any other entity that filed more than ten documents on paper in the previous calendar year are required to file electronically. All other parties may file documents on paper. , the Court will accept for filing paper documents that comply with the Rules.

(b) Form

All petitions, pleadings and other papers documents offered submitted for filing shall meet the following requirements of form:

(1) Legibility

Papers Documents shall be plainly and legibly typewritten, printed, or reproduced on one side of the paper only.

(2) Caption: Official Forms

The caption and form of all petitions, pleadings, schedules and other papers shall be in substantial compliance with the Federal Rules of Bankruptcy Procedure, Official Forms, or Local Rules for the Southern District of Indiana. Each paper document or set of papers documents filed shall bear the name of the Debtor and chapter of the case. Each paper document other than the original petition shall also have the case number.

(3) Signature

Every pleading, whether filed electronically or on paper, shall be signed. Any pleading lacking a signature shall be stricken from the record, if not corrected after notice to the filer.

(c) Filing Non-Electronically: Original And Copy Required

(1) Over the Counter

A party filing a document over the counter shall provide a signed original and a copy (or two originals). The file-marked original will be returned to the filer, and shall be retained by the filer as required by the Court's Electronic Case Filing Administrative Policies and Procedures Manual available on the Court's website.

(2) Proof of Identification for Initial Pleadings.

A *pro se* party filing a voluntary petition, an involuntary petition, or an adversary proceeding over the counter must appear in person and shall be required to provide a valid photo driver's license or other government-

issued photo identification before the petition or complaint will be accepted for filing. For *pro se* joint cases filed under 11 U.S.C. §302, only one spouse must be present. An exception may be granted if the debtor, creditor, or plaintiff has executed a power of attorney, and the holder of the power of attorney has presented the power of attorney and sufficient identification.

(23) By Mail

For documents submitted by mail, the filer shall provide a signed original, a copy (or two originals), and a self-addressed, stamped envelope. A file-marked original will be returned to the filer and shall be retained by the filer as required by the Electronic Case Filing Administrative Policies and Procedures Manual, available on the Court's website.

(34) Failure to Provide Copy or Self-Addressed, Stamped Envelope

A party who fails to provide a copy (or second original) or a self-addressed, stamped envelope for pleadings submitted by mail shall be presumed to have retained an original as required by the Electronic Case Filing Administrative Policies and Procedures Manual (available on the Court's website). The Clerk shall not return the original to the filer. Documents that are not returned to the filer will be discarded by the Clerk after scanning.

Comments

The rule is edited for clarity and to incorporate more clearly General Order 09-0003, requiring electronic filing by attorneys, and General Order 09-0011, requiring electronic filing by non-attorneys in certain circumstances. Subparagraph (2) is new, and incorporates General Order 09-0006 into the rule. All three General Orders will be rescinded once this rule amendment is adopted.

B-5005-4. ELECTRONIC FILING

The Court has adopted Electronic Case Filing Administrative Policies and Procedures to permit filing, signing, service, and verification of documents by electronic means. These Administrative Policies and Procedures, as described in the Manual [available on the Court's website](#), are incorporated into this Local Rule.

Comments

The rule is edited to remind that the CM/ECF Administrative Policies and Procedures Manual is available on the Court's website. (With the new program in which the Rules are

displayed on the Court's website, once published the rule will include a link to the Manual.)

B-7001-1. ADVERSARY PROCEEDING COVER SHEET

A party filing an adversary proceeding non-electronically shall also file a cover sheet using Official Form 104. Failure to provide the adversary proceeding cover sheet may result in dismissal of the complaint.

Comments

The Court has required an adversary proceeding cover sheet from paper filers so that the appropriate statistical information can be gathered. The requirement has not been made official through general order or local rule in the past.

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

(b) Filing Requirements

A 9006(c) Request shall be made by separate written motion and shall clearly refer to the non-First Day Motion or the contested matter to which it pertains (the "Underlying Motion"), shall specifically state the nature of the emergency or why the need for expedited treatment, and shall state the time by which the notice is to be shortened or the requested expedited hearing is to be held. The movant shall notify the chambers of the Judge assigned to the case of the filing of the 9006(c) Request ~~and shall upload or otherwise tender an Order Shortening Notice and/or Setting Expedited Hearing as described below.~~

Comments

The rule is edited because the order shortening notice and setting an expedited hearing is now a signed docket order.

B-9010-1. APPEARANCES

(c) Withdrawal of Appearance

(1) Successor Counsel Has Not Appeared

Counsel **for a debtor** desiring to withdraw his/her appearance in any action shall file a motion requesting leave to do so. Such motion shall fix a date for such withdrawal and shall include satisfactory evidence of either a written request to withdraw by counsel's client or a written notice

regarding the withdrawal from counsel to counsel's client at least seven (7) days in advance of the withdrawal date. **Counsel for a creditor or other non-debtor party may file a notice of withdrawal.**

(2) Successor Counsel Has Appeared

No advance notice to client is required if an Appearance by co-counsel, who will remain in the case, or if an Appearance by successor counsel, is filed prior to or concurrently with a motion to withdraw. However, the attorney being replaced must file a motion to withdraw **or a notice of withdrawal, pursuant to subparagraph (c)(1)**, before that attorney will be removed as a counsel of record in the case unless a substitution of appearance is filed by new counsel.

Comments

With the most recent version of CM/ECF, the Court is allowing counsel for entities other than debtors to withdraw by notice, rather than motion. The rule is amended to provide that a notice of withdrawal is permitted. While filing such a notice, the attorney affirms that no matter in which the attorney is involved is still pending, and that the client knows of the withdrawal, so no further proof of contact is required.