

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA

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

The Bankruptcy Judges are considering amendments to the local rules. The proposed amendments are attached.

Revisions to existing rule B-4001-3 would clarify procedures on motions to incur debt in Chapter 13 cases, addressing the absence of trustee consent and notice to the trustee. Proposed new rule B-4008-1 on reaffirmation agreements incorporates a current general order as to required forms and adds the requirement that counsel represent the debtors in the reaffirmation process and at any hearing.

Comments to the proposed amendments are due by **January 22, 2013**, and can be sent by e-mail to [Local\\_Rules\\_Comments@insb.uscourts.gov](mailto:Local_Rules_Comments@insb.uscourts.gov) or by regular mail to Kevin Dempsey, Clerk, United States Bankruptcy Court, Room 116, Birch Bayh Federal Building and United States Courthouse, 46 E. Ohio Street, Indianapolis, Indiana 46204.

December 19, 2012

/s/ Kevin P. Dempsey  
Clerk

PROPOSED AMENDMENTS TO LOCAL RULES  
DECEMBER 2012

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

(a) Dollar Limits

(1) \$1000 or Less

The Debtor may incur non-emergency consumer debt up to one thousand dollars (\$1,000.00), including the refinancing of real property debt, without written approval of the trustee or order of the Court.

(2) Greater than \$1000

The Debtor must seek approval of the trustee or an order from the Court before incurring non-emergency consumer debt of more than one thousand dollars (\$1,000) using the procedures set out in subparagraphs (b) through (d) of this Rule.

(b) Request Directed to Trustee

If the proposed debt is unsecured or to be secured by personal property, the Debtor shall first request approval to incur debt by written application to the trustee. Such request shall not be filed with the Clerk. If approved by the trustee, the Debtor may incur the debt in accordance with the terms and conditions approved by the trustee. If the trustee has not directed use of a specific form, the application shall include the following information:

- (1) a statement in support of the feasibility of the request;
- (2) a description of the item to be purchased or the collateral affected by the credit to be obtained;
- (3) a description of the interest held by any other entity in any collateral affected by the credit;
- (4) the reasons for which the Debtor has the need for the credit;
- (5) the terms of any financing involved, including the interest rate;
- (6) a description of any method or proposal by which the interest held by any other entity in the collateral affected by

the credit may be protected; and

- (7) copies of all documents by which the interest of all entities in the collateral affected by the credit was created or perfected, or, if any of those documents are unavailable, the reason for the unavailability.

(c) Filing Approved Request with the Court

If the Debtor seeks an order from the Court on a request that has been approved by the trustee, the Debtor may file the approved request with the Court and provide an order. **If the pleading is filed without documentation showing the trustee's approval, it will be treated as a Motion to Incur Debt filed under subparagraph (d).**

(d) Motion Directed to Court

If the proposed debt is greater than \$1000 and is to be secured by real property or if Debtor's request under subparagraph (b) is not approved by the trustee, the Debtor may file a motion to incur such debt. The motion shall contain all of the information required for the request by subparagraph (b) and, ~~if applicable, a copy of the trustee's denial of the request, and~~ be served on the trustee. **The Court shall give the trustee 14 days' notice of the opportunity to object to the Motion to Incur Debt.**

Comments

The rule is edited to clarify the procedure when a pleading seeking Court approval lacks proof of trustee consent to the proposed debt, and to establish the notice that will be given to trustees on any motion to incur debt.

**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 (240A or 240A/B Alt.), as well as the cover sheet (Official Form 27). 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) Enforceability

No notice, hearing or order shall be necessary to confirm the enforceability of a reaffirmation agreement filed with the court that is signed by all parties to the agreement, that conforms to the requirements of 11 U.S.C. §§524(c)(1), (2), and (4), and that is

accompanied by a declaration or affidavit of the attorney who represented the debtor during the negotiation of the agreement pursuant to U.S.C. §524(c)(3). Notwithstanding the foregoing, the court may set a hearing on a reaffirmation agreement as permitted by 11 U.S.C. 11 U.S.C. §524 and applicable law.

(c) Debtor's Appearance Required

If the court sets a hearing to consider a reaffirmation agreement, the debtor must appear at the hearing. The hearing will be evidentiary.

(d) Duties of Debtor's Counsel

Unless the attorney has withdrawn as attorney for the debtor pursuant to S.D.Ind. L..R. B-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 represent the debtor during the negotiation and filing of any reaffirmation agreements, and appear at any hearings on reaffirmation agreements.

Comments

This rule is proposed by the Bankruptcy Judges. Subparagraph (a) replaces General Order 10-0007 requiring the use of the available official forms for reaffirmation agreements. Subparagraph (b) captures current procedure, and provides that a hearing will not be required if the agreement conforms to Code requirements and is accompanied by the declaration or affidavit of debtor's counsel. Subparagraph (c) requires the debtor's appearance at any hearing on a reaffirmation agreement, and subparagraph (d) requires counsel's involvement in the negotiation of the agreement as well as attendance at any hearing.