

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

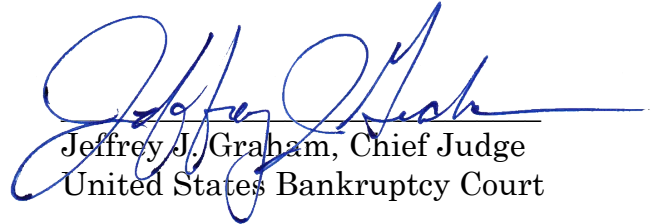
IN RE:)
)
ORDER AMENDING) GENERAL ORDER 24-0004
LOCAL BANKRUPTCY RULES)
)

ORDER

Notice of proposed amendments to the local rules of this Court was given to the bar and the public on October 22, 2024. The last date for submitting comments relating to the proposed amendments was November 19, 2024. No comments were submitted to the Court.

All proposed changes become effective on December 1, 2024, as shown in the attachment to this order.

December 2, 2024



Jeffrey J. Graham, Chief Judge
United States Bankruptcy Court

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

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

(1) Requirement

If the number of scheduled creditors in a single, consolidated, or jointly administered Chapter 11 case exceeds 300, the Debtor or trustee shall, unless the Court orders otherwise, propose the retention 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

A motion to retain a Noticing, Claims, or Balloting Agent, a motion to be excused from compliance with this rule, or a motion for extension of time shall be filed within 28 days after the filing of a schedule or creditor list that results in more than 300 creditors in a single, consolidated, or jointly administered case.

(3) Contact with Clerk

The proposed Agent shall meet with the Clerk or the Clerk’s designee, prior to employment, to agree on terms establishing the interactions between the proposed Agent and the Clerk. 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.

(4) Other Chapters

After notice and a hearing, the Court may authorize the retention of a Noticing and/or Claims Agent in a case filed under Chapter 7 or 12 if the number of creditors warrant such retention and sufficient funds to pay the Agent are, or will be, available.

(b) Noticing Agent

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

(c) Claims Agent

If a Claims Agent is to be employed, the Agreement or Employment Order shall:

- (1) establish procedures for handling of claims filed with the Clerk prior to and after the employment of the Claims Agent;
- (2) require the Claims Agent to mail a notice of bar date 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 a committee and the UST;
- (3) provide that, upon receipt of a claim, the Claims Agent shall promptly date-stamp it, assign a claim number, scan the original, file the claim electronically with the Court (with all claims received by the Claims Agent to be filed no less frequently than every 180 days starting from the date of the entry of the Employment Order), 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);
- (4) provide that the Claims Agent shall process all claims filed using the Court's electronic proof of claim option ("ePOC/eWOC");
- (5) require the Claims Agent to maintain the Claims Register, and that the Claims Agent shall list the claim on the register three 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;
- (6) allow the periodic audit of claims information by the Clerk, a representative of the creditors' committee, or some other entity;
- (7) provide the mechanism and timing for delivery of a final Claims Register to the Clerk;
- (8) require the Claims Agent to maintain, in addition to the Claims Register, a separate mailing list including the claimants' addresses, edited to reflect a notice of change of address;
- (9) 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);

(10) provide for the retention or destruction of documents received by the Claims Agent; and

(11) provide for treatment and disposition of Proofs of Claim if the case is converted to Chapter 7.

(d) Balloting Agent

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

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 fee guidelines of the UST under 28 U.S.C. §586(a)(3)(A)(i) and 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 11 and 12 Cases

(1) Cases Under Traditional Fee Award Process

If the Professional is not subject to a procedure allowing periodic payments under S.D.Ind. B-2014-1(b)(4), then the Professional shall file a final fee application under 11 U.S.C. § 330 no later than 14 days after entry of a dismissal order or the filing of an application for final decree or other pleading that will result in the closing of the case, except a motion under S.D.Ind. B-3022-2(c), unless the Court orders otherwise. If no application is filed by the deadline the Professional shall return to the Debtor any portion of the retainer the application of which has not been approved by the Court and the Professional is prohibited from seeking any further compensation related to the bankruptcy case.

(2) Cases with Periodic Payment Process

- (A) If the Professional has obtained Court approval of a periodic payment procedure under S.D.Ind. B-2014-1(b)(4), then the Professional shall file an application for interim fees and expenses under 11 U.S.C. § 331 no less frequently than 180 days after the order for relief and no later than every 180 days thereafter. The authorization for periodic payment procedures is suspended if the required applications are not filed.
- (B) The Professional shall file a final fee application under 11 U.S.C. § 330 no later than 14 days after entry of a dismissal order or the filing of an application for final decree or other pleading that will result in the closing of the case, except a motion under S.D.Ind. B-3022-2(c). If no application is filed by the deadline the Professional shall return to the Debtor any portion of the retainer the application of which has not been approved by the Court and the Professional is prohibited from seeking any further compensation related to the bankruptcy case.

(c) Chapter 13 Cases

(1) Traditional Fee Award Process

Compensation to an attorney representing a Chapter 13 Debtor (“Counsel”) shall be disclosed, reviewed, and approved 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 (b)(2) of this rule.

(2) Streamlined or “Presumed Reasonable” Fee Award Process

Counsel may have fees deemed awarded upon confirmation, without filing a separate 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) Counsel has filed a proof of claim and served that claim upon the trustee;
- (C) Counsel seeks no more than the maximum fee set by general order (the “Presumed Reasonable Fee”); and
- (D) No other counsel in the case has been awarded and paid any amount using the award process in this subparagraph.

(3) Supplemental Fees

(A) Lead Bankruptcy Case

Counsel may apply for additional fees if Counsel opted for the fee award process set out in subparagraph (c)(2) of this rule, but later determines that the Presumed Reasonable Fee is not sufficient. The application shall request only the amount in excess of the Presumed Reasonable Fee and be accompanied by time records supporting the total fees sought by Counsel in the case or by an affidavit explaining why the Presumed Reasonable Fee is inadequate and describing the services rendered in the case. The Clerk shall provide notice of the total fees requested.

(B) Adversary Proceedings Seeking to Avoid an Unsecured Mortgage

Counsel who files an adversary proceeding seeking to avoid an unsecured mortgage pursuant to S.D.Ind. B-4003-3 is entitled to an additional \$500 above the Presumed Reasonable Fee per adversary proceeding, provided that counsel

- (i) discloses the additional fee in the original or an amended Disclosure of Compensation of Attorney for Debtor (Form 2030); and
- (ii) includes the additional fee within counsel's original or amended proof of claim.

(4) Source of Fee Payment

Except for pre-petition retainers, all fees shall be paid through the plan and Counsel may not receive fees directly from the Debtor, unless the Court orders otherwise.

(5) Review of Fees

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

(6) Debtor's Non-Bankruptcy Professionals and Distribution of Settlements

As to any Professional whose employment was disclosed under S.D.Ind. B-2014-2, the proposed compensation to the Professional shall be disclosed in any Motion to Approve Settlement Distribution filed under S.D.Ind. B-9019-1(b), unless the information is provided in a Motion to Modify Plan.

B-2070-1. MOTION FOR TURNOVER

(a) Trustee Filed

A trustee who files a motion for turnover against the Debtor shall provide a 21-day Objection Notice to the Debtor, the UST, and any committee. Along with the motion, the trustee shall file the notice and 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.

(b) Debtor Filed

A motion for turnover of tangible personal property filed by a Debtor is subject to Fed.R.Bankr.P. 9014 and shall be served on all parties with an interest in the property. Along with the motion, the debtor shall file a Certificate of Service. The debtor is not required to provide an Objection Notice, as the Court will issue an appropriate notice which it may direct the Debtor to distribute. If so instructed, the Debtor shall file a Certificate of Service of the Court's notice prior to the scheduled hearing.

B-3011-1. TRUSTEE REMITTANCE OF UNCLAIMED FUNDS AND COURT FEES

An application for payment of unclaimed funds shall comply with the instructions set forth on and shall be submitted on the Application for Payment of Unclaimed Funds form made available on the Court's website. Trustee payments to the Court of unclaimed funds exceeding \$500.00 must be accompanied by a report explaining the trustee's efforts to locate the person or entity entitled to the funds. Trustees shall remit both fees owed by the estate and unclaimed funds to the Court as Automated Clearing House transactions.

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

(a) Form of Plan

The Court has adopted a Local Form for the Chapter 13 plan (the “Local Form Plan”) which replaces Official Form 113 as permitted by Fed.R.Bankr.P. 3015.1. 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 shall be filed within 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 creditors with claims secured by personal property as soon as practicable.

(d) Definition of Pre-Petition Arrearage

For the purposes of subparagraph (e), a “pre-petition arrearage” is defined as the amount asserted in Part 3 of Official Form 410A attached to the proof of claim if filed by a mortgage creditor, less any amount asserted as a projected escrow shortage and late fees.

(e) Payment of Pre-Petition Arrearage and Mortgage Conduit Payments through the Trustee

If, on the petition date, a pre-petition arrearage of more than one monthly mortgage payment exists on a mortgage secured by the Debtor’s principal residential real estate, then the Debtor shall make all payments on the mortgage through the Chapter 13 trustee, creating a mortgage conduit. Such payments made by the Trustee to the mortgage creditor shall include on-going post-petition mortgage installments, pre-petition arrearage, and any uncontested or allowed post-petition costs, fees, and charges asserted by the mortgage creditor. The Trustee shall notify the Debtor 30 days before the Debtor is obligated to resume direct mortgage payments.

(f) Distribution of Plans and Amended Plans

The Chapter 13 Trustee shall distribute the original plan, the first and second amended plans and related notice, and file a Certificate of Service. If service of the plan other than by first-class mail is required by Fed.R.Bankr.P. 3012 or 4003, the trustee may require the Debtor to distribute the plan to that entity and provide proof of service to the trustee. The Debtor shall distribute a third amended or subsequent plan and related notice, and file a Certificate of Service.

(g) Distribution of Notice of Confirmation

After the Court has entered an order confirming a plan, the Chapter 13 Trustee shall distribute notice of confirmation as required by Fed.R.Bankr.P. 2002(f)(7) and file a Certificate of Service.

B-4004-3. OBTAINING DISCHARGE AFTER CASE CLOSED FOR FAILURE TO FILE FINANCIAL MANAGEMENT REPORT CERTIFICATE OF DEBTOR EDUCATION

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

B-7037-1. DISCOVERY DISPUTES

(a) Required Actions Prior to Court Involvement

Counsel shall confer in a good faith attempt to resolve any discovery dispute prior to involving the Court. If a dispute cannot be resolved, counsel may contact the chambers of the assigned Judge to determine whether the Judge is available to resolve the discovery dispute by telephone conference or other proceeding prior to the filing of a formal discovery motion. When the dispute involves an objection raised during a deposition that threatens to prevent completion of the deposition, any party may recess the deposition to contact the Judge's chambers.

(b) Requirements of Motion to Compel

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

(c) Pro Se Parties

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

B-7067-1. REGISTRY FUNDS

(a) Interpleader and Other Deposit Motions: Contents

Any action in interpleader or that seeks to deposit funds with the ~~Clerk~~ Court under Fed.R.Bankr.P. 7067 shall include the filer's certification that the proposed deposit has been discussed with the Clerk ~~or the Clerk's financial supervisor~~ and that the filer understands the terms and conditions that will be imposed upon the deposit.

(b) Fees Charged Against Deposits

The ~~Clerk or its agents~~ Court shall deduct from income earned on registry funds invested in interest-bearing accounts or instruments a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office of the U.S. Courts according to and published in the Federal Register. Funds deposited with the Court under 11 U.S.C. §347(a) are not subject to this rule.

B-9010-2. SUBSTITUTION AND WITHDRAWAL OF APPEARANCE

(a) Substitution

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

(b) Motion to Withdraw

(1) Exceptions

An attorney for a party other than the Debtor shall file a motion to withdraw an appearance except that a notice of withdrawal may be filed:

- (A) when another attorney remains attorney of record for the party; or
- (B) when the party has no controversy pending before the Court.

(2) Requirements

(A) A motion to withdraw shall provide:

- i. satisfactory evidence of a written request from the party to withdraw; or
- ii. an attached copy of a notice to the party of the intent to withdraw sent at least seven days before the filing of the motion to withdraw, which includes a statement either that no hearing, conference, or deadline involving the party is set in the next 30 days or that identifies the hearing, conference, or deadline; and

iii. the party's last known telephone number.

(B) An attorney seeking to withdraw their appearance on behalf of a client who is the nonmovant to a pending summary judgment motion for which a responsive pleading has yet to be filed shall serve upon the client a Notice for *Pro Se* Cases described in S.D.Ind. B-7056-1(g) along with a motion to withdraw.

(c) Service

A substitution of appearance, a motion to withdraw, or a notice of withdrawal shall be served:

- (1) in an adversary proceeding, on all parties to the proceeding; and
- (2) in a bankruptcy case, on all counsel of record and the Debtor, if not represented by counsel.

(d) Effect of Failure to Comply

The original attorney remains the party's attorney of record until compliance with subparagraph (a), (b), or (c) of this rule, as applicable, subparagraph (d) of this rule, and entry of an order, if necessary, permitting withdrawal.

(e) Attorney Status in Court Record After Withdrawal or Substitution

The Court shall remove the attorney from the list of attorneys receiving notices and orders in the case or adversary proceeding upon the Court's entry of an order granting a motion to withdraw, or the filing of a notice of withdrawal or substitution of appearance. The Court's docket shall continue to list the attorney, with a notation that the attorney's appearance has been terminated.

B-9010-3. BAR ADMISSION

(a) Bar of the Court

The bar of this Court consists of those persons admitted to practice in the Southern District of Indiana and under subparagraph (c) of this rule. The Rules of Professional Conduct, as adopted by the Indiana Supreme Court, and the District Court's Local Rules of Disciplinary Enforcement, govern the conduct of those practicing in this Court.

(b) Exceptions

In all matters and proceedings before this Court, a person not a member of the bar of the Southern District of Indiana shall not be permitted to practice unless such person:

- (1) appears on his or her own behalf as a party;
- (2) is admitted to practice in any other United States Court or the highest court of any state, is not currently under suspension or subject to other disciplinary action, and is, on motion to this Court under subparagraph (c) of this rule, granted leave to appear in a specific action;
- (3) appears as an attorney for the United States; or
- (4) files a document as to which an appearance is not required under S.D.Ind. B-9010-1(a)(4).

(c) Pro Hac Vice

An attorney seeking leave to appear in a specific action shall file a Motion to Appear *Pro Hac Vice*. A separate motion that complies substantially with the form available on the Court's website shall be filed for each attorney seeking admission under this subparagraph and be accompanied by:

- (1) if not admitted to practice in the State of Indiana, an affidavit that substantially complies with the form available on the Court's website; and
- (2) a proposed order granting the motion.

B-9011-1 NON-INDIVIDUALS APPEARING WITHOUT COUNSEL

A non-individual or an individual appearing in a representative capacity may not file a petition or otherwise appear without counsel in any case or proceeding but may file a proof of claim, a request for notice under Fed.R.Bankr.P. 2002(g), a creditor change of address, or an application for payment of unclaimed funds if signed by an authorized representative.