

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

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

The Court is proposing various amendments to its local rules. The changes include:

- Elimination of local rules or rules sections that have been superseded by changes to the national rules effective December 1st (the “*Stern*” amendments, requiring party consent to entry of final judgment by a bankruptcy judge).
- Updates to Local Rule B-6005-1 on retention of auctioneers.
- Clarifications to Local Rule B-1009-1, on amendments to initial case documents, to stress that the changes should be noted in some way and the document should include all information from the original that remains accurate.

The proposals are attached. The Judges reserve the right to make additional changes before the target effective date of December 1st.

Comments to the proposed rule can be made by sending an email to Local_Rules_Comments@insb.uscourts.gov . Deadline for comments is Tuesday, November 22, 2016.

November 4, 2016

/s/ Kevin P. Dempsey
Clerk

LOCAL RULES AMENDMENTS – December 2016

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 ~~shall~~ be accompanied by the appropriate filing fee;
- (B) ~~Each amendment shall also~~ be verified and signed by the Debtor under penalty of perjury;
- (C) note the information that has changed in the document, by highlighting, or by describing the change on the first page of the amendment or summarized in an attachment;
- (D) include all information from the original document that remains accurate; and
- (E) ~~then the Debtor shall also file~~ be accompanied by an amended summary of schedules and if appropriate an amended statistical summary of certain liabilities ~~if an~~ the amendment changes the total of any schedule.

(2) Amendments Adding Creditors

Any amendment which adds a creditor shall state the date the debt was incurred. 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 the added creditors only.

Comments

Committee members noted certain recurring problems with amendments to initial case documents, particularly schedules. Sometimes the amendment includes only the new information, and fails to include all the original information which remains accurate. Since the amendment replaces the original, and does not supplement it, that practice raises questions about the accuracy of what has been filed. Also, when the amendment is to a lengthy document, it can be difficult for readers to determine what has changed. The proposed edits to the local rule address both of these concerns. (The Committee notes that the requirement of highlighting or

describing the change to an amended document existed in the local rule before the arrival of electronic filing.) The Committee decided to give options for how to explain what the amendment changed, to maximize flexibility.

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

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

Comments

This rule was only recently adopted, but failed to consider the recent retirement of the ECF event Motion to Modify Mortgage and the direction to use of Motion to Modify Secured Debt. The Committee felt that modifications aren't made to secured debt covering collateral other than real estate, so rule should be edited as proposed to minimize confusion.

B-6005-1. LIQUIDATORS/AUCTIONEERS AND APPRAISERS

(a) Bond Required

All liquidators/auctioneers retained by a trustee or Debtor in any case who will come into possession or control of the assets or proceeds of assets of an estate shall ~~either participate in the bond program administered by the UST or~~ post a bond with the **UST on behalf of the United States of America** ~~as obligee~~ for the full value of the assets in the possession or control of the liquidator/auctioneer, unless otherwise ordered by the Court.

(b) Remittance of Gross Proceeds

Unless otherwise ordered by the Court, all gross proceeds shall be remitted to the trustee or Debtor within fourteen (14) days of the sale. Upon motion of any party in interest and for good cause shown, the Court may authorize the liquidator/auctioneer to submit net proceeds or to turn over to a secured creditor the net proceeds realized from the sale of that creditor's collateral.

(c) Validity of Checks

The validity of any checks or bank drafts accepted by the liquidator/auctioneer shall be the sole responsibility of the liquidator/auctioneer.

(d) ~~Separate Escrow Account~~

~~If the liquidator/auctioneer does not make an immediate settlement with the trustee or Debtor in any case, and the proceeds of the property sold are \$50,000.00 or more, the auctioneer shall open a segregated escrow or trust account for deposit of the sale proceeds. This account shall be designated by the bankruptcy estate case name and shall require the co-signature of the trustee for any withdrawals. If the proceeds of the sale are less than \$50,000.00, the proceeds may be deposited in the auctioneer's trust or client fund account.~~

(e) ~~Appraiser Serving as Liquidator/Auctioneer~~

~~No appraiser, agent, or employee of an appraiser who has been employed in a bankruptcy case may serve as the liquidator/auctioneer in that same case without the approval of the Court.~~

(d) Liquidator/Auctioneer Purchasing at Sale

No liquidator/auctioneer, or any agent or employee of a liquidator/auctioneer employed in a case, may purchase an asset from the estate.

Comments

The edit to subparagraph (a) is proposed because the United States Trustee no longer coordinates a blanket bond for auctioneers.

The Committee questioned the source of the \$50,000 threshold in (d). Perhaps it was the FDIC insurance limit at the time the rule was enacted, or a compromise, 'convenience' amount. It is possible that auctioneer trust accounts may be subject to the same protections as other commingled trust accounts and each estate is actually protected up to new FDIC limits. The Judges decided to drop this subparagraph.

The Committee also noted that subparagraph (e) may not be needed. The Court controls employment and would know if an approval of an appraiser as an auctioneer is sought. (The practice seems to have disappeared.) The Judges decided to drop this subparagraph.

~~B-7008-1. REQUIRED STATEMENT REGARDING CONSENT TO ENTRY OF ORDERS OR JUDGMENT IN CORE PROCEEDING~~

~~In an adversary proceeding, in addition to the statements required by Fed.R.Bankr.P. 7008(a), the complaint, counterclaim, cross-claim, or third party complaint shall contain a~~

~~statement that the pleader does or does not consent to the entry of final orders or judgment by the Bankruptcy Judge.~~

Comments

Changes to national rule 7008 effective 12/1/16 eliminate the need for this local rule.

~~**B-7012-1. REQUIRED STATEMENT IN RESPONSIVE PLEADING REGARDING CONSENT TO ENTRY OF ORDERS OR JUDGMENT IN CORE PROCEEDING**~~

~~In addition to statements required by Fed.R.Bankr.P. 7012(b), a responsive pleading shall include a statement that the party does or does not consent to the entry of final orders or judgment by the Bankruptcy Judge.~~

Comments

Changes to national rule 7012 effective 12/1/16 eliminate the need for this local rule.

B-9027-1. REMOVAL

- (a) Claim or Cause of Action Filed or Pending in a State Court within the Jurisdiction of the Southern District of Indiana

If the bankruptcy case is filed or pending in the Southern District of Indiana, removal is accomplished by filing a notice of removal as an adversary proceeding in the bankruptcy case. If the bankruptcy case is filed or pending in another jurisdiction, **the party requesting the removal (or movant) shall** contact the Clerk of the Bankruptcy Court to open a miscellaneous proceeding. (After the filing with the Bankruptcy Court, a copy of the notice of removal should be filed in the state court where the matter is pending.)

- (b) Claim or Cause of Action Filed or Pending in the District Court for the Southern District of Indiana and the Bankruptcy Case **Is** Pending in this District

A motion for a directed reference to the Bankruptcy Court may be filed with the District Court.

- ~~(c) Required Statement in Notice of Removal Regarding Consent to Entry of Orders or Judgment in Core Proceeding~~

~~In addition to the statements required by Fed.R.Bankr.P. 9027(a), the notice of removal shall contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to the entry of final~~

~~orders or judgment by the Bankruptcy Judge.~~

~~(d) Required Statement Regarding Consent to Entry of Orders or Judgment in Core Proceeding~~

~~The statement filed pursuant to Fed.R.Bankr.P. 9027(e)(3) by a party who files a pleading in connection with a removed claim or cause of action shall contain a statement that the party does or does not consent to the entry of final orders or judgment by the Bankruptcy Judge.~~

~~(ec) Court Review of Removal~~

~~The Bankruptcy Court may set a hearing, upon notice to the parties, to determine the propriety of the removal and whether the Court should abstain or remand.~~

Comments

Edits to national rule 9027 effective 12/1/16 eliminate the need for subparagraphs (c) and (d).

~~**B-9033-1. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CERTAIN CORE PROCEEDINGS**~~

~~If the Court hears a proceeding and determines that it cannot enter a final order or judgment consistent with Article III of the United States Constitution in a particular proceeding referred to the Court and designated as core under 28 U.S.C. §157(b), and if the parties have not consented to entry of final orders or judgment, then Fed.R.Bankr.P. 9033(a), (b), and (c) shall apply as if it is a non-core proceeding.~~

Comments

Edits to national rule 9033 effective 12/1/16 eliminate the need for this local rule.