

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA

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

The Court's Local Rules Advisory Committee has proposed various amendments to the local rules. After a preliminary review and some minor edits, the Judges have directed that the proposals be posted for public comment.

The proposals are attached. The Comments to each rule are from the Committee, and not the Judges.

Comments to the proposed rule 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 Friday, January 31, 2014.

January 2, 2014

/s/ Kevin P. Dempsey  
Clerk

LOCAL RULES EDITS PROPOSED BY COMMITTEE  
[JANUARY 2014 SET]

**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 propose the retention pursuant to 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) Application

Unless extended by the Court, the application, or a motion to be excused from compliance with this rule, shall be filed within 28 days after the filing of the case.

(3) Contact with Clerk

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

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

Proofs of Claim with a notice of bar date should be mailed by the Claims Agent and should reflect the scheduled amount of the creditor's claim. Unless alterations are approved by the Court, after notice to any committee and the UST, the forms shall comply substantially with Official Form B10. The forms will instruct claimants to send claims to the Claims Agent and not the Court.

(3) Handling of Claims and Transfers of Claims

Generally, upon receipt of a claim, the Claims Agent should 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

Usually, the Claims Register should be maintained by the Claims Agent. The Claims Agent should 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

The Agreement or the Employment Order may provide for the periodic audit of claims information by the Clerk, a representative of the creditors' committee, or some other entity.

(6) Transmission of Claims

The Agreement or Employment Order should provide the mechanism and timing for delivery of ~~updated~~ **a final** Claims Registers to the Clerk. ~~(Example: the register may be transmitted in both an electronic and paper format, bi-weekly, until the claims bar date and then monthly thereafter).~~

(7) Mailing List

In addition to the Claims Register, the Claims Agent should maintain a separate mailing list including the claimants' addresses, edited to reflect any notice of change of address.

(8) Transfers of Claims

The Agreement or the Employment Order should establish responsibility and method for processing transfers of claims.

(9) Retention/Destruction of Documents

The Agreement or Employment Order should provide for ~~delivery of a final Claims Register and for~~ the retention or destruction of documents received by the Claims Agent.

(10) Effect of Conversion

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

Comments

Subparagraph (a) is split into three parts, and subparagraph (b) captures two new concepts: a deadline for filing the application to employ or a motion to be excused from this Rule; and language to escape the restriction on early orders authorizing employment, found in Fed.R.Bankr.P. 6003. Subparagraph (c), which sets the terms for a Claims Agent, is edited to add instructions concerning transfers of claim – which must be filed with the Court because of the fee that is charged – and to eliminate the concept of periodically delivered claims registers.

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

~~“Prepackaged” Chapter 11 cases are governed by General Order 03-11, as it may be subsequently amended or superseded.~~

(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.

Comments

The local rule is amended to eliminate the cross-reference to General Order 03-11, which has become outdated (and will be rescinded when this local rule is adopted). The rule establishes a new, streamlined method for setting quick confirmation on a ‘prepackaged plan.’

**B-7001-1. ADVERSARY PROCEEDING COVER SHEET**

(a) Cover Sheet Required.

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.

(b) Addresses for Defendants Required.

A plaintiff filing an adversary proceeding without counsel is required to provide the addresses of all defendants, to facilitate service of the summons by the Clerk.

Comments

Subparagraph (a) was part of the last set of proposed amendments but was pulled because of the desire to incorporate subparagraph (b). The Court has required an adversary proceeding cover sheet from parties filing non-electronically 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.

The national form cover sheet does not specifically require that defendants' addresses be provided. However, when a pro se plaintiff files an adversary proceeding, the Clerk must serve the summons. Without an address in the cover sheet, the Clerk must search through the complaint or the list of creditors in the case seeking an address. Risk of proper service should be borne by the plaintiff, and therefore the Court is requiring the plaintiff to provide all defendants' addresses.

## **B-9010-1. APPEARANCES**

### (a) Appearances

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#### (2) Requirement in Adversary Proceedings

Counsel for the plaintiff, **including Debtor's counsel**, shall file an appearance with the complaint. Counsel for a defendant, including Debtor's counsel, shall file an appearance before filing any other pleading.

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### (c) Withdrawal of Appearance in a Bankruptcy Case

#### (1) Successor Counsel Has Not Appeared

- (i) Counsel for a Debtor desiring to withdraw his/her appearance in any case 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 **and shall provide the Court with the client's last known telephone number.**
- (ii) Counsel for a creditor or other non-debtor party who no longer has any issue pending in the case may file a notice of withdrawal. **If counsel is involved in a pending issue, then counsel shall file a motion requesting leave to do so, complying with the requirements for such motions in the preceding subparagraph.**

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(d) Withdrawal of Appearance in an Adversary Proceeding

(1) Successor Counsel Has Not Appeared

Counsel for any plaintiff or defendant in an adversary proceeding desiring to withdraw his/her appearance 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 **and shall provide the Court with the client's last known telephone number.**

Comments

Subparagraph (a)(2) is revised to strengthen the reminder for Debtor's counsel that an appearance is needed in an adversary proceeding. Subparagraph (c)(1) is further subdivided to provide clearer guidance to counsel for a creditor or other party as to the proper way to withdraw when still involved in an active issue. The requirement to provide the last known telephone number for the client is added for both the case and any adversary proceeding.

**B-9022-1. NOTICE OF ENTRY OF JUDGMENT**

(a) Clerk's Duty to Provide Notice

The Clerk shall mail or deliver by electronic means to the contesting parties a copy of a judgment or order showing the date the judgment or order was entered. The certificate of notice docketed by the Bankruptcy Noticing Center or other agent qualifies as the notice required by Fed.R.Bankr.P. 9022.

(b) Notice to Electronic Filers

Immediately upon entry of an order or judgment in a case or adversary proceeding the Clerk shall transmit electronically to the registered users in the case or adversary proceeding a "Notice of Electronic Filing." Electronic transmission of that Notice of Electronic Filing constitutes the notice required by Fed.R.Bankr.P. 9022.

(c) Notice to Other Parties

The Clerk shall give notice in paper form to contesting parties who have not consented, or are not permitted to consent, to electronic service.

Comments

Fed.R.Bankr.P. 9022 requires the Clerk to give notice of the entry of a judgment or order. For parties who file documents electronically and have therefore given permission to be served

electronically, the docketing of any judgment or order results in electronic notice to them. Requiring another, separate notice to be sent either electronically or by mail would be redundant and a waste of resources. This rule is patterned after a similar rule in place in the District of Utah.