

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:

- Further clarification on the proper way to give notice to another court about the filing of the bankruptcy, with edits based on comments received to this proposal when it was made in November 2015.
- Restrictions on viewing rights for pay advices and similar documents. The proposal is prompted by the number of personal identifiers often contained in those documents.
- Requirements for the content of motions to modify mortgages.
- The same restrictions for periodic payment in Chapter 11 cases from sources other than the retainer as apply to draws on retainer.

The proposals are attached. The Judges reserve the right to make additional changes before the target effective date of February 22nd.

Comments to the proposed rule can be made by sending an email to Local_Rules_Comments@insb.uscourts.gov . Deadline for comments is Tuesday, February 16, 2016.

January 26, 2016

/s/ Kevin P. Dempsey
Clerk

LOCAL RULES AMENDMENTS – JANUARY 2016

B-1000-1. ABBREVIATIONS AND DEFINITIONS

(b) Definitions Applicable to All Rules

- (1) Debtor: Includes both debtors in a joint case and a debtor-in-possession in a Chapter 11 case. ~~Except as to official forms which must be signed by the debtor (or debtor's representative in a non-individual case), a~~ **A** requirement imposed upon the "Debtor" by these rules shall be performed by counsel for the debtor, if any, **except as follows:**

- (i) **Official Forms must be signed by the debtor (or the debtor's representative in a non individual case); and**
- (ii) **if counsel for the Debtor in the bankruptcy case has not entered an appearance in the matter pending before a state court or other tribunal, then the notices required by B-4002-1(a) shall be signed by the debtor or any attorney who has entered an appearance for the Debtor in the non-bankruptcy matter.**

Comments

This edit is proposed in conjunction with the proposed edits to B-4002-1, to make clear that counsel for the debtor in the bankruptcy case who has not otherwise appeared in a non-bankruptcy matter does not have to file the notices required by B-4002-1. Responsibility for ensuring proper notice to the other tribunal rests with the debtor.

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

(a) Additional Requirements

- (6) **list a state court or administrative agency only if that entity is the actual creditor and not just the tribunal of a claim, debt or lawsuit.**

Comments

This proposed edit is linked to the proposed changes to B-4002-1, concerning notice to other tribunals. Some practitioners have been listing state courts or other tribunals on the creditor list, to generate mailing of a notice of the bankruptcy to the court/tribunal. The bankruptcy clerk is only required to give notice to creditors, and these courts/tribunals usually aren't themselves creditors. Providing notice to those entities is an unnecessary expense to the

Court and also creates confusion as the state courts contact the bankruptcy clerk when staff are unable to link the notice of bankruptcy to a case or proceeding in their court.

B-1007-5. RESTRICTED ACCESS TO PAY ADVICES

The Clerk shall restrict access to documents required by 11 U.S.C. §521(a)(1)(B)(iv), filed either on paper (when permitted) or using the “Pay Advices/Statement in Lieu” event in the Court’s electronic filing system, in the same manner as access is restricted to the Statement of Social Security Number. Any party in interest who wants to receive a copy of the documents to which access has been restricted by this rule may request same from the Debtor.

Comments

This new rule directs that access be restricted to pay advices and other documents which debtors file to comply with the requirements of 11 U.S.C. §521(a)(1)(B)(iv). Those documents frequently contain personal identifiers which are not supposed to be entered in the public record, pursuant to Fed.R.Bankr.P. 9037(a). As with the Statement of Social Security Number, some parties to the case will have electronic access to the documents: the debtor’s attorney, the case trustee and the U.S. Trustee. Other parties in interest can request copies from debtors or their counsel.

B-2014-1. EMPLOYMENT OF PROFESSIONAL PERSONS AND TREATMENT OF RETAINERS IN CHAPTER 11 CASES

(b) Employment Applications in Chapter 11 Cases

(5) Other Periodic Payment Procedure

The Court may approve procedures for periodic payment, other than from a retainer, upon separate application and notice. A proposal for periodic payments based on actual fees incurred should limit payment to 80% of the billed amount of fees, but may provide for payment of 100% of incurred expenses.

Comments

This subparagraph was added December 1st but contained no guidance on what terms are acceptable. The Judges decided to add such guidance and mirror the terms acceptable for draws on retainer.

B-4001-1. MOTIONS TO MODIFY MORTGAGES

Any motion to modify a mortgage shall include in the body of the motion the terms of the original mortgage, including the rate of interest, amount of escrow funds, monthly payment and maturity date of the loan and the proposed changes to any of those terms.

Comments

This rule is new, and is intended to require disclosure in the motion of the proposed changes to the mortgage, so that judicial and trustee review is expedited.

B-4002-1. DEBTOR'S DUTIES

(a) Notice to Other Tribunals

~~Immediately upon the entry of an order for relief, the Debtor shall give written notice to any Court or tribunal where an action is pending against the Debtor and to the parties and counsel involved in that action. If an action is commenced subsequent to the date of the order for relief, the Debtor shall give similar written notice to the Court or tribunal and to all parties and counsel involved.~~

(1) Notice in Matters Pending at Time Bankruptcy Case Filed

Upon the entry of an order for relief in the bankruptcy case, the Debtor shall file written notice in any action in which the Debtor is a party that is pending in another tribunal. That notice shall contain:

- (i) the caption and case number of the non-bankruptcy action;
- (ii) the name and case number of the bankruptcy case; and
- (iii) the name and contact information of any attorney for the debtor in the bankruptcy case, if other than the attorney filing the notice.

(2) Notice in Matters Commenced After Bankruptcy Case Filing

If an action is commenced subsequent to the date of the order for relief, the Debtor shall file a written notice with that tribunal that contains the information required in subparagraph (a)(1) of this rule.

(3) Notice to Other Parties

The Debtor shall deliver a copy of the notice filed with the tribunal to the parties and counsel involved in that action.

(4) Sample Form Available

A sample notice is available on the Court's website at www.insb.uscourts.gov.

Comments

This edit was first proposed in the autumn of 2015, but drew several comments which prompted the Court to pull the rule from adoption. The changes are proposed to make clear that the proper way to give notice to a court or tribunal other than the bankruptcy court in which a matter involving the debtor is pending (or is filed) is to file a written notice with that court or tribunal. Listing the court as a creditor on the mailing matrix is insufficient. Since the original publication, the Judges have added edits to B-1000, changing the definition of “Debtor” to make clear that as to this rule it does not mean counsel who filed the bankruptcy case; and B-1007-1, instructing filers not to add non-creditor courts and tribunals to the creditor list.