

PROPOSED REVISIONS TO LOCAL RULES

September 16, 2013

The Court and the Local Rules Committee are soliciting comments to proposed revisions to the Local Rules. Proposed revisions are shown in red.

1. Local Bankruptcy Rule 1003-1, Involuntary Petition - Filing Requirements, paragraphs (b) and (c) are revised to read as follows.
 - (b) **Matrix.** An involuntary petition shall be accompanied by a matrix, in proper form as set forth in **LBR 1007-2(c)**, containing the name and address, of all petitioning creditors, any attorneys for petitioning creditors, and any other parties in interest known to the petitioning creditors or their attorney.
 - (c) **Certification of Matrix.** The matrix required by paragraph (b) shall be certified in the manner directed in LBR 1007-2(f).
2. Local Bankruptcy Rule 1007-2, Mailing Matrix, changes paragraph (f) to provide involuntary case information. Paragraph (f) reads as follows.
 - (f) **Matrix Certification in an involuntary case.** Whenever a matrix is required to be submitted in an involuntary case the proponent or proponent's attorney must certify that the matrix contains the name and address, of all petitioning creditors, their attorneys and any other parties in interest known to the petitioning creditors or their attorneys. The certification shall conform substantially to the following:

CERTIFICATION OF MAILING MATRIX (involuntary case)

I (we), _____, the attorney for the petitioning creditors hereby certify under the penalties of perjury that the above/attached mailing matrix has been compared to and contains the name and, addresses, zip codes and, if required, account numbers, in redacted form, of all persons and entities, as they appear on the list of creditors/list of equity security holders, or any amendment thereto filed herewith of the petitioning creditors, any attorneys for petitioning creditors and any other parties in interest known to the petitioning creditors or their attorney.

Dated:

Attorney for Petitioning Creditors

3. Local Bankruptcy Rule 2015-1, Debtor in Possession Duties, paragraph (b) is revised to read as follows.
 - (b) **Monthly Statement of Operation Required in a Chapter 13 Business Case.** The operating report mandated by Fed. R. Bankr.P 2015(c)(1) must be filed monthly and, in addition, must be served upon the United States trustee, and any governmental unit charged with responsibility for collection or determination of any tax arising out of the operations.
4. Local Rule 3015-3, Chapters 12 and 13 - Submission and Service of Confirmation Order, is revised to read as follows.
 - (a) **Preparation of Confirmation Order.** The confirmation order shall be prepared and submitted by the trustee within sixty (60) days of the final hearing on confirmation unless otherwise ordered by the Court.
 - (b) **Service of the Confirmation Order.** The trustee shall serve the confirmation order ~~in conformance with Fed. R. Bankr. P. 7004 on all creditors subject to relief on an Allowed Contested Matter, and~~ by regular first-class mail upon the debtor and any other interested party who makes a written request for service.
5. Local Rule 3015-4, Chapters 12 and 13 - Modification to plan prior to and after confirmation, has been revised to clarify the procedures required to modify a plan before and after confirmation. The revised rule is shown below.

**RULE 3015-4 CHAPTERS 12 AND 13 - MODIFICATION TO PLAN
PRIOR TO AND AFTER CONFIRMATION**

- (a) **Modification of Plan Prior to Confirmation.**
 - (1) **Format.** A debtor seeking to modify a plan prior to confirmation shall use the Model Plan and check the box in the caption to indicate the Chapter 13 Plan is “Amended” (the “Amended Plan”) and provide the date thereof.
 - (2) **Procedure.** The Amended Plan shall be filed and served on the trustee, the United States trustee, and all creditors that are being detrimentally affected by the proposed modification. The Amended Plan shall be served with Notice of Time Fixed for Filing Objections To and the Hearing to Consider Confirmation of Chapter 13 Plan not later than 28 days prior to the hearing. Not later than seven (7) days prior to the hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.

(3) Objections to an Amended Plan. An objection to confirmation of an Amended Plan must be filed and served on the debtor, debtor's attorney, and the trustee not later than seven (7) days prior to the confirmation hearing.

(b) Modification of Plan After Confirmation.

(1) Format. A debtor seeking to modify a plan after confirmation (the “Modified Plan”) does not need to use the Model Plan. The Modified Plan shall set forth only those terms of the confirmed Chapter 13 plan that the proponent seeks to modify.

(2) Procedure. A Court order is required to modify a confirmed plan. A debtor, trustee, or holder of an allowed unsecured claim seeking to modify a confirmed plan shall:

- (a) File the Modified Plan;
- (b) File a notice of motion and a motion to modify confirmed plan;
- (c) Serve the notice of motion on all creditors, and serve the notice of motion and motion to modify plan on the trustee, the debtor, and, if the debtor is not the movant, the debtor’s attorney; and
- (d) File a certificate of service not later than seven (7) days prior to the return date of the motion.

(3) Notice of Motion. The notice of motion to modify confirmed plan shall include the following disclosures:

- (a) A clear statement of the proposed modification, with specific reference to the provisions of the previously filed plan that are being modified;
- (b) Any change in the dividend to be paid to unsecured creditors, indicating the specific percentage change in the dividend;
- (c) Any change in the time for the final payment under the plan;
- (d) Any change in the plan payment;
- (e) Any effect on the specific treatment of secured creditors under the plan; and

(f) The exact reasons for the modification, including specific and detailed changes in the budget of the debtor, or other circumstances of the debtor that would justify the modification.

(4) Proposed Order Modifying Confirmed Plan. Any proposed order that modifies a confirmed plan shall be captioned Order Modifying Confirmed Plan and must include the modified terms of the plan as requested in the motion to modify confirmed plan as approved by the Court.

6. Local Rule 4001-1, Relief from the Automatic Stay, paragraph (b) is revised to read as follows.

(b) Motions Involving Real Property in Cases Where the Debtor is an Individual. If the movant seeks stay relief with respect to a mortgage on real property and the basis for the motion is a payment default, and the debtor has not indicated in the petition and schedules or in a plan of reorganization that the debtor intends to surrender the real property, the movant shall file, as an exhibit to the motion, a completed copy of Certification of Payment History on the Note and Mortgage Dated _____ and Related Information. If the Certification is not required, the movant shall indicate the reason why in its motion.

7. Local Rule 4004-1, Completion of Plan and Entry of a Chapter 12 or Chapter 13 Discharge, paragraph (b)2 is revised to read as follows.

2. Request for Waiver of Certifications for Deceased Debtor. Upon ex parte application and submission of a proposed order, the court may consider the waiver of certifications required under LBR 4004-1(b) for a deceased debtor. The ex parte application must be supported by a properly redacted death certificate.

8. The Court proposes new Local Rule 4004-2, Motion for Hardship Discharge, which reads as follows.

RULE 4004-2 MOTION FOR HARDSHIP DISCHARGE

(a) Content of Motion. Motions for discharge under 11 U.S.C. § 1328(b) shall be filed with the court and served on the trustee, United States trustee, any party having filed a notice of appearance and all creditors, at least 21 days preceding the date fixed for hearing. The motion shall set forth the basis for the discharge and provide evidence in support of the motion. A copy of a proposed order shall be attached to the motion as an exhibit to the motion.

(b) **Requirements Prior to Issuance of Hardship Discharge.** Prior to a discharge being entered by the Court, debtor or debtors are required to file with the court the [Chapter 13 Debtor\(s\) Certifications Regarding Domestic Support Obligations and Section 522\(q\) and 1328 \[local form O1328C\]](#) and the [Debtor's Certification of Completion of Instructional Course Concerning Financial Management \[Official Form B 23\]](#). Both certifications are required for any case filed AFTER October 16, 2005, unless waived by application and an order of the court.

(c) **Objection to entry of discharge.** Any party wishing to contest the entry of a discharge must file a written objection to the entry of a discharge not later than (7) days prior to the date set by the Clerk for the hearing on the Request for Discharge and serve such objection on the debtor, debtor's attorney, the trustee, the United States trustee, and any party having filed a notice of appearance. In the event no objections to discharge are filed, and the debtor is otherwise eligible to receive a discharge, the Clerk may issue a discharge in the case.

9. Local Rule 5010-1, Reopening a Case, paragraph (e) is revised to read as follows.

(e) **Ex Parte Relief.** A motion to reopen a case may be considered ex parte if the purpose of the motion is (1) to file a debtor's certificate of completion of financial management course, (2) to correct an administrative error, (3) on account of actions relating to the debtor's discharge or (4) is a motion to avoid lien pursuant to section 522(f).

10. Local Rule 9013-1, Motion Practice, paragraphs (j), (l), and (n) are revised to remove the Albany, Syracuse, Utica differences. The sections are revised to read as follows.

9013(j) Procedure for Requesting Adjournment.

An adjournment request shall be made by electronically filing not later than 2:00 p.m. the day prior to the hearing an Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters form or an Adjournment Request/Withdrawal/Settlement Notification for Confirmation Hearings form.

9013(l) Procedure for Notification of Withdrawal.

Notice of the withdrawal of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters form.

9013(n) Procedure for Notification of Settlement.

Notice of the settlement of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters form.

11. Local Rule 9013-3, Default Motion Practice, the notice required by paragraph (a) is revised to read as follows.

IF YOU INTEND TO OPPOSE THIS MOTION, WRITTEN OPPOSITION MUST BE FILED WITH THE CLERK OF THE COURT AND SERVED ON MOVANT'S COUNSEL AT LEAST SEVEN (7) DAYS PRIOR TO THE RETURN DATE. IF YOU DO NOT FILE AND SERVE WRITTEN OPPOSITION, NO HEARING WILL BE HELD ON THE RETURN DATE AND THE COURT MAY GRANT THE MOTION AS UNOPPOSED.

12. Local Rule 9013-3, Default Motion Practice, paragraph (c)(3) is revised to read as follows:

- (3) Allow Administrative Expenses for Professional Fees in a chapter 13 case which are not in excess of \$1,000.00, provided however, that said fees are requested for services rendered in connection with a motion brought by default under this Rule.

13. Local Rule 9013-3, Default Motion Practice, is revised to remove paragraphs (c)(6) and (c)(18) from default motion practice.

~~(c)(6) Avoid Judicial Lien and Non-Possessory, Non-Purchase Money Security Interest (§ 522(f))~~

~~(c)(18) Hardship Discharge (§§ 1228(b) and 1328(b))~~

14. Local Rule 9037- 1, Privacy Protection - Redaction of a Personal Identifier, is revised to include the following comment:

Comment

On occasion counsel or parties may have the need to file multiple requests for redaction of personal identifiers. Counsel or parties should contact the Clerk's Office prior to filing the requests for redaction.