

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

IN RE

**AMENDMENTS TO LOCAL RULES OF
THE BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

No. 2012-03

GENERAL ORDER

It is hereby ORDERED that the Local Rules of the United States Bankruptcy Court for the Eastern District of Tennessee (the “Local Rules”) are amended to read as set forth on the attachment hereto [the amended portions are shown in red and the deleted portions are shown in strikeout]. It is further ORDERED that these amendments shall become effective November 1, 2012, and that the clerk shall publish the Local Rules, as amended, on the court’s website.

ENTERED: October 16, 2012

/s/ Marcia Phillips Parsons
MARCIA PHILLIPS PARSONS
Chief United States Bankruptcy Judge

/s/ Richard Stair, Jr.
RICHARD STAIR, JR.
United States Bankruptcy Judge

/s/ John C. Cook
JOHN C. COOK
United States Bankruptcy Judge

/s/ Shelley D. Rucker
SHELLEY D. RUCKER
United States Bankruptcy Judge

**AMENDMENTS TO
LOCAL BANKRUPTCY RULES OF THE
UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
effective November 1, 2012**

RULE 1017-1. CONVERSION — REQUEST FOR/ NOTICE OF

* * *

(b) Conversion from Chapter 7. A debtor may seek conversion pursuant to 11 U.S.C. § 706(a) only by motion. The movant must serve the motion on all creditors and set the motion for hearing in accordance with the procedure in Local Rule 9013-1(f) or utilize the passive notice procedure of Local Rule 9013-1(h). Each motion must be accompanied by a proposed order, approved for entry by the movant and served with the motion on all creditors. The conversion will be effective upon entry of the order.

RULE 2002-1. NOTICE TO CREDITORS & OTHER INTERESTED PARTIES

* * *

(b) Chapter 11 Notices. Unless the court orders otherwise, notices required by Fed. R. Bankr. P. 2002(a)(2)-(3) and 4001(b)-(d) in chapter 11 cases must be served only on—

* * *

- (7) all secured creditors;
- (78) the United States trustee;
- (89) any government or department, agency, or instrumentality of any government to which the debtor may be indebted or that may otherwise be affected; and
- (910) the United States Attorney, if the United States or any department, agency, or instrumentality of the United States is a creditor or may be otherwise affected.

**RULE 2016-1. COMPENSATION OF DEBTOR'S
ATTORNEY IN CHAPTER 13 CASES**

(a) Presumptive Fee.

* * *

(2) *Supplemental Fees for Postconfirmation, Non-routine Services.* Any attorney who has received a Base Fee pursuant to subdivision (a)(1) of this rule, and who seeks additional compensation or reimbursement of expenses for representing the debtor in connection with the case after plan confirmation for services or expenses not considered routine, must file an itemized fee application that complies with Fed. R. Bankr. P. 2016(a). In filing the application, the attorney must follow the motion procedure set forth in Local Rule 9013-1, which requires, *inter alia*, that the application be accompanied by a proposed order and be set for hearing or contain the passive notice language. The application must set forth the effect of the additional fee, if any, on the dividend to be paid unsecured creditors under the confirmed plan. The applicant must serve the application, along with the proposed order, on the debtor and the trustee; the application must also be served on all creditors and other parties in interest if (A) the fee requested exceeds \$1,000, or (B) the additional fee would affect the dividend to be paid unsecured creditors under the confirmed plan. The chapter 13 trustee shall review the amount sought and object thereto if the trustee believes the amount is excessive under the circumstances of the case. As provided by 11 U.S.C. § 331, applications for additional compensation or reimbursement of expenses may not be filed more often than once every 120 days. As provided by 11 U.S.C. § 503(b)(2), amounts awarded under this subdivision (and the other subdivisions of this rule) constitute administrative expenses.

* * *

RULE 3007-1. CLAIMS — OBJECTIONS

(a) Procedure. Any party filing an objection to a [proof of](#) claim must set the objection for hearing in accordance with the procedure in Local Rule 9013-1(f) or utilize the passive notice procedure of Local Rule 9013-1(h).

(b) Objection Requirements. In the event the objecting party utilizes the passive notice procedure of Local Rule 9013-1(h), the objection must be accompanied by an affidavit or declaration under penalty of perjury that sets forth the evidentiary basis for the objection unless the objection is premised on procedural grounds evident from the record.

(c) **Proposed Order.** Each objection to a proof of claim must be accompanied by a proposed order sustaining the objection and approved for entry by the movant, which order must be served with the objection.

(d) **Service.** Each objection to a proof of claim must contain a certificate evidencing service of the objection and proposed order (along with the Notice of Hearing if a hearing is set) on the claimant at the address set forth in the proof of claim, the debtor, debtor's counsel, and the trustee.

RULE 4001-1. AUTOMATIC STAY — RELIEF FROM

(a) Chapter 7 Cases.

(1) *Contents of Motion.* A motion for relief from the automatic stay filed by a secured creditor in a chapter 7 case must state the basis for the relief sought and include—

- ~~(i) a statement of the unpaid balance of the creditor's claim as of the date of filing of the debtor's petition; and~~
- ~~(ii) a description of the collateral in which the creditor asserts a security interest; and~~
- ~~(iii) a statement of the creditor's good faith estimate of the value of the collateral.~~

* * *

RULE 4001-2. AUTOMATIC STAY — IMPOSITION OR CONTINUATION

(a) Motion to Impose Stay

* * *

(4) *Service.* Each motion must contain a certificate evidencing service of the motion and proposed order, along with a Notice of Hearing, on each creditor proposed to be stayed. ~~If the motion is scheduled to be heard on less than 10 days' notice, the motion must (in addition to methods prescribed by the Bankruptcy Rules) be sent by a method effecting immediate receipt, such as by e-mail or telephone facsimile. Proof of compliance with the notice requirements of this subdivision must be filed at or prior to the hearing on the motion. The court will determine at the hearing whether the notice and opportunity for hearing were appropriate in the particular circumstances.~~

* * *

RULE 6004-1. SALE OF ESTATE PROPERTY

(a) Notice of Proposed Sale of Property.

(1) *Content of Notice.* Notice of a proposed use, sale or lease of property must, in addition to the requirements of Fed. R. Bankr. P. 2002(c)(1), set forth—

- (i) the name **and address** of the proposed buyer; and
- (ii) the consideration to be received by the estate or the debtor.

* * *

RULE 9013-1. MOTION PRACTICE

(a) Scope of Rule. As used in this rule, the word “motion” includes any motion, application, objection to claim, objection to a claim of exemption, or other request for an order in a bankruptcy case, except as otherwise directed by the court. Specifically excluded from the scope of this rule are motions in adversary proceedings.

(b) Form and Content of Motions. All motions (except those made orally during a hearing or trial) must—

- (1) be in writing and filed with the clerk;
- (2) be titled in the form “Motion [or Application] of [Movant’s Name] for [Relief Requested]” or “Objection by [Objecting Party] to Proof of Claim filed by [Name of Claimant]” or “Objection by [Objecting Party] to Claim of Exemption”;
- (3) state with particularity the grounds for the motion; and
- (4) request specific relief.

* * *

(d) Service of Motions.

(1) Requirement. Every motion must contain a certificate in accordance with Local Rule 9013-3, evidencing that the movant has served the motion, proposed order, and, if applicable, the Notice of Hearing, on the requisite parties in interest.

(2) Fee Applications. Applications for payment of professional fees or for administrative expenses need not be served on all creditors. Rather, a summary of the application identifying the applicant and the amount requested **must may** be incorporated into the Notice of Hearing or into a separate notice which includes the passive notice legend. If a separate notice of the hearing or passive notice deadline is given, a hearing notice or passive notice legend need not be included in the application itself so long as it is included in the separate notice.

(3) Expedited Hearings. If a motion is authorized to be heard on less than 10 days' notice, the motion must (in addition to methods prescribed by the Bankruptcy Rules) be sent by a method effecting immediate receipt, such as by e-mail or telephone facsimile. Proof of compliance with the notice requirements of this subdivision must be filed at or prior to the hearing on the motion. The court will determine at the hearing whether the notice and opportunity for hearing were appropriate in the particular circumstances.

* * *

(g) Ex Parte Motions.

* * *

(2) *Types of Motions.* The motions which fall within this category are—

* * *

- (xiv) subject to Fed. R. Bankr. P. 6003(a), applications to employ professionals pursuant to Fed. R. Bankr. P. 2014 that do not seek approval of a postpetition retainer or a particular fee arrangement and that do not reveal any actual or potential conflicts of interest or any other facts that could preclude retention; provided that the application has been served on the debtor, the debtor's attorney, and the United States trustee who will have seven days from the date of service in which to object;

* * *

(h) “Passive Notice” (Notice and Opportunity for a Hearing) Motions.

(1) *Type of Motions.* As an alternative to setting and noticing a motion for hearing as required in subdivision (f) of this rule, a movant may follow the passive notice procedure set forth herein whereby no hearing is set or held unless a party in interest objects to the relief requested in the motion. This passive notice procedure may be used only for the following matters—

- (i) motions in chapter 7 cases for adequate protection or for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) or (2); provided, however, if the passive notice procedure is utilized, the movant is deemed to have waived the 30-day automatic termination provision of 11 U.S.C. § 362(e) [see Rule 9013-1(h)(1)(xx) regarding chapter 13 cases];

* * *

- (vi) motions pursuant to Fed. R. Bankr. P. 4001(d) for approval of an agreement (A) to provide adequate protection, (B) to prohibit or condition the use, sale, or lease of property, (C) to modify or terminate the stay provided for in 11

U.S.C. § 362, (D) to use cash collateral, or (E) between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property;

- (vii) notices of the proposed use, sale, or lease of property not in the ordinary course of business pursuant to Fed. R. Bankr. P. 6004(a); ~~but not motions to sell property free and clear of liens or other interests pursuant to Fed. R. Bankr. P. 6004(c)~~, which must be set for hearing;

* * *

- (xi) objections to ~~proofs of~~ claims, filed in accordance with Local Rule 3007-1;

* * *

- (xix) motions by debtors to reopen closed cases and for leave to file proof of completion of instructional courses in personal financial management; ~~and~~
- (xx) motions in chapter 13 cases for relief from the automatic stay with respect to collateral pursuant to 11 U.S.C. § 362(d)(1) or (2), provided that the plans provide for the surrender of the collateral [see Rule 9013-1(h)(1)(i) regarding chapter 7 cases];
- (xxi) motions in chapter 13 cases pursuant to Fed. R. Bankr. P. 3002.1(h) or (i) for a determination of whether the debtor has cured the default and paid all required postpetition amounts, but only if the holder of the claim has not filed a response within the 21-day period prescribed by Fed. R. Bankr. P. 3002.1(g) or has filed a response indicating that it agrees that the debtor has cured the default and paid all required postpetition amounts;
- (xxii) motions in chapter 13 cases pursuant to Fed. R. Bankr. P. 3002.1(e) for a determination of whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with 11 U.S.C. § 1322(b)(5); and
- (xxiii) motions to declare debtors ineligible for discharge pursuant to 11 U.S.C. § 1328(f).

Notwithstanding the foregoing, the procedure described in this subdivision (h) may not be utilized if a request for one of the types of relief listed above is combined with a request for relief for which subdivision (f) requires a hearing.

(2) *Passive Notice Legend.* Except as provided in subdivision (d)(2) of this rule, motions Matters filed pursuant to this passive notice procedure must contain a passive notice legend prominently displayed on the face of the first page of the motion immediately below the caption. The passive notice legend must be in a form substantially as follows:

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 9013-1(h), the court may consider this matter without further notice or hearing unless a party in interest files an objection. If you object to the relief requested in this paper, you must file with the clerk of the court at ___[address]___, an objection within ___[number]___ days from the date this paper was filed and serve a copy on the movant's attorney, ___[name and address and any other appropriate persons]___. If you file and serve an objection within the time permitted, the court will schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the court will consider that you do not oppose the granting of the relief requested in this paper and may grant the relief requested without further notice or hearing.

(3) *Objection deadline.* The number of days in which parties may object that is placed in the passive notice legend must be 21 days except

- (i) motions for relief from the automatic stay or to compel abandonment (or both) in chapter 7 cases for which the objection time must be at least 14 days;
- (ii) motions for adequate protection in chapter 7 cases when combined with motions for relief from the automatic stay or to compel abandonment (or both) for which the objection time must be at least 14 days;
- (iii) objections to proofs of claim pursuant to Fed. R. Bankr. P. 3007 for which the objection time must be at least 30 days; **and**
- (iv) motions pursuant to Fed. R. Bankr. P. 4001(d) for approval of (i) an agreement to provide adequate protection, (ii) an agreement to prohibit or condition the use, sale, or lease of property, (iii) an agreement to modify or terminate the stay provided for in 11 U.S.C. § 362, (iv) an agreement to use cash collateral, or (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property, for which the objection time must be at least 14 days;
- (v) motions in chapter 13 cases for relief from the automatic stay with respect to collateral to be surrendered under the plans for which the objection time must be at least 14 days; and
- (vi) motions in chapter 13 cases for relief from the codebtor stay for which the objection time is 20 days pursuant to 11 U.S.C. § 1301(d).

Except as otherwise provided in this subdivision, when requests for more than one type of relief with respect to which the “passive notice” procedure is available are combined into a single motion, the objection period is the longest one applicable to any of the types of relief.

* * *

RULE 9019-1. SETTLEMENTS

* * *

(c) Service. Except as provided in the next sentence, the motion must contain a certificate evidencing service of the motion and proposed order (along with the Notice of Hearing if a hearing is set) on the debtor (or the trustee if the debtor is filing the motion), all creditors, and other parties in interest including the United States trustee. Unless the chapter 13 plan provides for the insurance proceeds to be paid to unsecured creditors, a motion in a chapter 13 case to approve a compromise and settlement of a motor vehicle casualty insurance claim need be served only on the chapter 13 trustee; and creditors claiming security interests in the motor vehicle; ~~and the insurance company or agent.~~

* * *

RULE 9019-2. MEDIATION

(a) Referral for Mediation. The court may, in the judge's discretion and with or without the consent of the parties, refer any adversary proceeding or contested matter for Mediation. Any Mediation Reference may be withdrawn by the Presiding Judge upon a determination for any reason that the matter referred is not suitable for Mediation. Once an order has been entered directing that the parties participate in Mediation, the parties will be required to do so unless the court enters an order withdrawing the Mediation Reference.

(b) Definitions

For purposes of this rule:

- (1) "District Court" means the United States District Court for the Eastern District of Tennessee.
- (2) "Mediator" means an individual approved to serve as mediator in an adversary proceeding or contested matter in accordance with paragraph (i) of this rule.
- (3) "Mediation" means a procedure presided over by an approved mediator to promote conciliation, communication, and the ultimate settlement of an adversary proceeding or contested matter pending in this court.
- (4) "Mediation Conference" means a settlement conference or meeting conducted by a Mediator during the course of a Mediation.
- (5) "Mediation Panel" means the Mediation Panel of the District Court that is maintained in the office of the Clerk of that court.
- (6) "Mediation Reference" means a directive contained within a scheduling order or other order entered by the court directing the parties to participate in a Mediation.
- (7) "Mediation Report" means a report filed with the court by a Mediator in the form provided by the Clerk.
- (8) "Presiding Judge" means the bankruptcy judge assigned to the adversary proceeding or to the case in which the contested matter is pending.

(c) Neutrality of a Mediator

A Mediator may not accept an engagement in a Mediation in circumstances in which he or she has a personal bias or prejudice relative to the parties or issues involved in the dispute being mediated.

(d) Mediators as Counsel in Other Cases

A Mediator who has been engaged as a Mediator may not appear as counsel in the matter upon which he or she was engaged as a Mediator or in any substantially related matter. No person who is approved and designated as a Mediator will for that reason be disqualified from appearing and acting as counsel in any other case pending before the court.

(e) Disclosure of Conflicts

Prior to accepting an engagement as a Mediator, each Mediator must disclose to the parties all actual or potential conflicts of interest reasonably known to the Mediator, any current, past, or expected future professional relationship, consulting relationship, personal relationship, or pecuniary interest with or in any party or attorney involved in the Mediation, as well as any other circumstance or matter which would result in the disqualification of a judicial officer under 28 U.S.C. § 455. Mediators must also disclose to all parties any offer made to the Mediator before completion of the Mediation process of a future professional, consulting, or pecuniary relationship with any party or attorney or law firm involved in the underlying dispute.

(f) Confidentiality and Restrictions on the Use of Information

The Mediation Conference and all proceedings relating thereto, including statements made by any party, attorney, or other participant, are confidential and are inadmissible to the same extent as discussions of compromise and settlement are inadmissible under Federal Rule of Evidence 408. Mediation proceedings may not be reported, recorded, placed into evidence, or made known to the Presiding Judge, or construed for any purpose as an admission against interest. Mediators must not divulge the details of information imparted to them in confidence in the course of Mediations without the consent of the parties, except as otherwise may be required by law.

(g) Compensation of Mediators

Mediators will be compensated at rates to be agreed upon by the parties and the Mediator. Compensation for any Mediator's services must be borne equally by the parties to the Mediation unless other arrangements are agreed to by the parties.

(h) Subpoenas

Neither the parties to the Mediation nor any other person in any forum may attempt to subpoena the Mediator or any documents created in connection with, and for the purpose of, Mediation, without first obtaining leave of court to do so.

(i) Qualification of Mediators

Unless the Presiding Judge orders otherwise, an individual may be approved to serve as a Mediator if he or she is (i) a member of the Mediation Panel, or (ii) selected by agreement of all of the parties. The Presiding Judge has complete discretion and authority to withdraw the approval of any Mediator at any time.

(j) Party Attendance Required

Unless otherwise excused by the Mediator in writing, all parties, or party representatives, and any required claims professionals (e.g., insurance adjusters) must be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the court.

(k) Mediation Report

Within seven days following the conclusion of each Mediation Conference, the Mediator must file a Mediation Report, which includes a statement as to whether (i) all parties were present, (ii) the adversary proceeding or contested matter settled; (iii) the Mediation was continued with the consent of the parties, and (iv) the Mediation was terminated without a settlement. No other information may appear on the Mediation Report; nor, without the consent of all parties, may any other or additional report or communication regarding the status of the Mediation be provided by the Mediator to the Presiding Judge.

(l) Special Procedures When Mediation is Ordered Without the Consent of the Parties

- (1) In the event the parties cannot agree on a Mediator, the plaintiff (in the case of an adversary proceeding) or movant (in the case of a contested matter) must submit a list of a minimum of five proposed Mediators selected from the Mediation Panel and the defendant or respondent must select a Mediator from that list and notify the plaintiff/movant of the selection within seven days after receipt of the list. If the defendant/respondent does not timely notify the plaintiff/movant of the defendant/respondent's selection, the plaintiff/movant may select a Mediator.
- (2) At the request of an approved Mediator, the cost of his or her services or any portion thereof may be taxed as court costs.

LOCAL FORM 2016.1

[CAPTION]

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

1. Pursuant to 11 U.S.C. § 329(a), Fed. R. Bankr. P. 2016(b), and Local Bankruptcy Rule 2016-1(a)(1), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor in contemplation of or in connection with this chapter 13 case is as follows:

For legal services and expenses, I have agreed to accept.. . . . \$ _____

Prior to the filing of this statement I have received.. . . . \$ _____

Balance Due.. . . . \$ _____

This fee is a “Base Fee.” That means that I will not charge any additional amount for any services rendered or expenses incurred prior to confirmation of the chapter 13 plan, or for any routine services or expenses that I expect to render or incur after confirmation. The types of post-confirmation services and expenses usually considered “routine,” so that I will not charge extra for them, include the following:

Review of confirmation order and periodic case status reports from trustee	Other routine communications with the debtor, including keeping the debtor informed regarding the status of the case; reminders about meetings and hearings; consultations regarding postpetition credit, defaults on direct payments, insurance coverage or lack thereof, etc.
Maintaining custody and control of all case files with original documents for such periods prescribed by law or court rule	Obtaining and providing the trustee with copies of documents relating to lien perfection issues, such as recorded deeds of trust, security agreements, and the like
Service of notices and orders as required by court rule	Preparation and mailing of letters to creditors regarding lien releases, the turnover of clear title certificates, the cancellation of deeds of trust and judgments, and the like
Preparation, filing, and prosecution of objections to claims that one can reasonably anticipate will not be contested, such as objections to untimely filed claims and objections to duplicate claims.	The preparation and certified mailing of letters to creditors regarding alleged violations of the automatic stay
Consummation of assumptions and rejections of unexpired leases and executory contracts	<u>Appearance at all hearings relating to confirmation of the original and any amended chapter 13 plan</u>
Defense of motions to transfer venue or to dismiss for improper venue	Defense of one motion to dismiss filed after confirmation of plan
Responding to written or oral contacts from creditors regarding plan terms, valuation of collateral, claim amounts, and the like	Any other services and expenses that an attorney would reasonably expect to render or incur in most, if not all, chapter 13 cases
Responding to debtor contacts regarding changes in financial circumstances, including job changes and unanticipated expenses	

The types of post-confirmation services and expenses usually **not** considered “routine,” so that I **may** charge extra for them and file a supplemental fee request, after exercising appropriate billing judgment and taking into account the fees previously awarded, include the following:

Motion for authority to sell property	Post-discharge injunction actions
Motion to modify plan	Adversary proceedings
Motion to incur debt	Defense of motions to convert case to chapter 7
Defense of motion for relief from automatic stay or codebtor stay	Motions to substitute collateral
Defense of a second or additional motions to dismiss filed after confirmation of plan	Supplemental fee requests
Stay violation litigation, including amounts paid as fees by the creditor or other party	<u>Motions under Fed. R. Bankr. P. 3002.1(e) and (h)</u>
<u>Non-routine claim objections</u>	<u>Motions to employ attorneys for a special purpose</u>
<u>Motions to approve settlements</u>	

2. The source of the compensation paid to me was:
 Debtor Other: _____
3. The source of the compensation to be paid to me is:
 Debtor Other: _____
4. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

or

I have agreed to share the above-disclosed compensation with a person or persons who are not members of my law firm. A copy of the agreement and a list of the names of the people sharing in the compensation are attached.

ATTORNEY’S CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor in connection with this chapter 13 case. I further certify that the Base Fee set forth above is based on the consideration of the benefit and necessity of my services to the debtor and all other relevant factors, including the time spent or to be spent on such services, the rates charged for such services, the total amount of the secured and unsecured debt, the nature of the case (whether consumer or business), and the complexity of the case. I further certify that I have furnished a copy of this fee disclosure to the debtor and the chapter 13 trustee.

Dated: _____

[SIGNATURE OF ATTORNEY]