

PROPOSED AMENDMENTS TO LOCAL RULES

~~RULE 1006-1. FEES — INSTALLMENT PAYMENTS~~

Comment

This rule is being abrogated.

RULE 1007-1. LISTS, SCHEDULES, & STATEMENTS

(a) Payment Advices or Other Evidence of Payment from Employer. The debtor must comply with 11 U.S.C. § 521(a)(1)(B)(iv) and Fed. R. Bankr. P. 1007(b)(1)(E) (requiring the filing of copies of all payment advices or other evidence of payment, if any, received by the debtor from an employer within 60 days before the filing of the petition) by filing a statement substantially conforming to Local Form 1007.1. For purposes of complying with Fed. R. Bankr. P. 1007(b)(1)(E), and 11 U.S.C. § 521(a)(1)(B)(iv), the debtor may simply attach to Local Form 1007.1 the debtor's most recent paycheck stub showing year-to-date earnings, if the debtor has worked the same job for the last 60 days before the date of the filing of the petition.

(b) Certificate of Completion of Personal Financial Management Course. Fed. R. Bankr. P. 1007(b)(7) may be satisfied by an approved personal financial management provider filing a certificate bearing—

- (1) the debtor's name;
- (2) the debtor's case number;
- (3) a certification by such provider that it is an approved personal financial management provider and that the debtor completed an instructional course in personal financial management; and
- (4) an electronic (“/s/”) or manual signature by an authorized agent of the provider.

If a provider does not file the certificate, the debtor must complete and file, if required by Fed. R. Bankr. P. 1007(b)(7), Official Form 423, Certification About a Financial Management Course, available on the court's website, www.tneb.uscourts.gov. If the debtor indicates on the form that completion of a personal management course is not required, the debtor must also file a motion in accordance with E.D. Tenn. LBR 9013-1(f) to seek a waiver of the requirement.

Comment

The amendment clarifies that the debtor must file the official form if a certificate is not filed by a provider.

RULE 1009-1. AMENDMENTS TO PETITIONS, LISTS, SCHEDULES, & STATEMENTS

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(b) Notice of Amendment. Every amendment must be accompanied by an attached Notice of Amendment that identifies all changes between the former and amended document.

(c) Service. Every amendment along with the Notice of Amendment must be accompanied by a certificate evidencing service by the debtor on the trustee, if one has been appointed, the United States Trustee, and any affected entity. If the amendment is to a petition, Your Statement About Your Social Security Numbers (Official Form 121), or Schedule C: The Property You Claim as Exempt (Official Form 106C), the certificate of service for the amended petition, statement, or schedule must evidence service on all creditors and parties in interest because all are deemed affected by the amendment.

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Comment

This amendment clarifies that the Notice of Amendment must identify all changes and be served.

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

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(d) Debtor's Attorney Fee in Cases Dismissed or Converted Before Confirmation. In the event a chapter 13 case is dismissed or converted before plan confirmation, the attorney for the debtor will be awarded a fee in the amount of \$1,750, absent a request filed by the attorney or an objection filed by the trustee or the debtor within 14 days after entry of the dismissal or conversion order. The awarded fee is to be paid from any prepetition retainer held by the debtor's attorney, with the balance paid by the chapter 13 trustee from any plan payments on hand, after payment of any unpaid filing fees and trustee's fee. In the event there are any other unpaid administrative expenses awarded under 11 U.S.C. § 503(b), the trustee must pay these expenses along with the balance of the fee award on a pro-rata basis from plan payments in the trustee's possession.

Comment

This amendment clarifies that a standing chapter 13 trustee has the authority to retain the percentage fee in cases dismissed or converted before confirmation.

RULE 3002-1. CLAIMS — TIME FOR FILING / CHAPTER 13

(a) Rejection of Executory Contract or Unexpired Lease. A claim arising from the rejection by a debtor in a chapter 13 plan of an executory contract or unexpired lease must be filed within 60 days from the entry of the order confirming the plan that first rejects the executory contract or unexpired lease.

(b) Surrender of Collateral. When a debtor surrenders collateral in a chapter 13 plan for which a creditor has timely filed a secured claim, the creditor must amend the claim within 120 days from entry of the order confirming the plan in order for any deficiency claim to be paid under the plan.

(c) Extension. Any motion to extend the 60- or 120-day period in (a) or (b) must be filed within the relevant 60- or 120-day period to be timely.

Comment

This rule is new and follows the standard provisions in new Local Form 3015.1.

RULE 3007-1. CLAIMS — OBJECTIONS

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(b) Affidavit or Declaration in Support. In the event a party utilizes the passive notice procedure of E.D. Tenn. LBR 9013-1(h) in filing

Comment

This amendment deletes existing subdivision (b) because an amendment to Fed. R. Bankr. P. 3007 includes a service provision, *Manner of Service*, at (a)(2) of the rule.

RULE 3015-1. CHAPTER 13 — PLAN

(a) Local Form. The use of Local Form 3015.1 is mandatory for all chapter 13 plans. When an attorney for the debtor signs a plan or otherwise consents to a plan modification, the attorney certifies that the debtor consents to its provisions and has authorized its filing.

(b) Service Generally. If the chapter 13 plan is filed with the petition, the clerk of court will serve the plan on creditors and parties in interest at the addresses listed on the debtor's master address list. If a debtor elects to file a plan after filing the petition, the debtor must serve the plan on creditors, parties in interest, and the chapter 13 trustee, and file a certificate of service in accordance with E.D. Tenn. LBR 9013-3.

(c) Service Required by Fed. R. Bankr. P. 9014 and 7004. When a chapter 13 plan includes a request to determine the amount of a creditor's secured claim under Fed. R. Bankr. P. 3012(b), provides for the partial or entire avoidance of a creditor's lien under Fed. R. Bankr. P. 4003(d), or

otherwise contains a provision that requires the creditor be served in the manner required by Fed. R. Bankr. P. 9014 and 7004, the debtor must—

- (1) include on the master address list required by E.D. Tenn. LBR 1007-2 the names and addresses necessary to properly effectuate service upon those affected creditors by first class mail under Fed. R. Bankr. P. 7004(b); and
- (2) if service by some manner other than first class mail is required, such as certified mail upon an insured depository institution under Fed. R. Bankr. P. 7004(h), file along with the plan a certificate evidencing service of the plan upon those affected creditors in the manner required.

Comment

This amendment adds new subdivision (a) to incorporate the mandatory use of the local plan form and provides that certain certifications are made by a debtor's attorney when signing a plan and/or agreeing with the chapter 13 trustee or a creditor to change a provision of the plan during the confirmation process. Subdivision (b) is amended to clarify that the clerk's only duty is to serve the plan upon the creditors as listed on the debtor's master address list. Subdivision (c) is new and requires that the debtor include on the master address list the names and addresses of those creditors for which first class mail service must be effected in accordance with Fed. R. Bankr. P. 7004 (*see, e.g.*, Fed. R. Bankr. P. 3012(b) and 4003(d)), and that the debtor must file a certificate along with the plan evidencing service upon a creditor for which some manner other than first class mail is required.

RULE 3070-1. CHAPTER 13 PAYMENTS

(a) Preconfirmation Payments to Lessor or Creditor. If entitled to preconfirmation payments under 11 U.S.C. § 1326(a)(1)(B) or (C) on personal property leases or adequate protection payments on a claim secured by personal property, the creditor may file a motion under E.D. Tenn. LBR 9013-1(g) for entry of an order directing the chapter 13 trustee to commence making a monthly payment to the creditor in an amount not to exceed \$50 after the filing fee has been paid in full, provided the creditor has filed a proof of claim. If the creditor requests a monthly payment in excess of \$50, the creditor must set the motion for hearing in accordance with E.D. Tenn. LBR 9013-1(f). The trustee may assess an administrative fee for effecting payments required by this rule equal to the percentage fee fixed for the trustee under 28 U.S.C. § 586(e)(1)(B).

Comment

This amendment deletes a triggering event of a provision in a proposed chapter 13 plan because Local Form 3015.1 does not have a standard provision for preconfirmation payments.

RULE 4003-2. LIEN AVOIDANCE — JUDICIAL

A motion to avoid a judicial lien filed by a debtor pursuant to 11 U.S.C. § 522(f)(1)(A) must set forth the factual basis for the motion, including—

- (1) the amount of the lien;
- (2) the nature and amount of all other liens on the property, excluding any avoided lien;
- (3) the dollar amount of the claimed exemption; and
- (4) the identity and fair market value of the property subject to the lien;.

Comment

The amendment conforms the Rule’s requirements with the mathematical language of 11 U.S.C. § 522(f)(2)(A).

RULE 6007-1. ABANDONMENT

(a) Abandonment by Trustee in a Chapter 7 No-Asset Case. Pursuant to Fed. R. Bankr. P. 6007(a), a chapter 7 trustee in a no-asset case may, at or after the 11 U.S.C. § 341(a) meeting of creditors, abandon property of the estate without notice to creditors or the United States Trustee unless a written request for notice of an abandonment is filed at or before the § 341(a) meeting. If a request for notice of abandonment is timely filed, the trustee may limit service of a proposed abandonment to the party requesting notice.

(b) Motion to Compel Abandonment. Unless the court orders otherwise, a motion by a party in interest for an order requiring a trustee or debtor in possession to abandon property of the estate must be served upon the debtor, the debtor’s attorney, the trustee, and all creditors and parties in interest. In a chapter 7 no-asset case, however, service of a motion for entry of an agreed order that includes an abandonment of property of the estate is not required if the motion is filed after the § 341(a) meeting and no party has filed a written request for notice of abandonment or the requesting party has approved entry of the agreed order.

Comment

In this district, the current practice is that all chapter 7 cases are noticed by the clerk’s office as no-asset cases. The Notice of Chapter 7 Bankruptcy Case, also known as the § 341 notice, advises creditors and parties in interest: “No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline. . . . [U]nless a written request for notice is filed at or before the meeting of creditors, the bankruptcy trustee may abandon property of the estate without further notice to creditors.” The last sentence is a reference to E.D. Tenn. LBR 6007-1(a).

If the chapter 7 trustee discovers assets in the case, the trustee makes a docket entry requesting that a “Notice of Assets be sent to all creditors.” At this point, the chapter 7 case is no longer a no-asset case. The clerk of court then sends out a form entitled “Notice of Need to file Proof of Claim

Due to Recovery of Assets,” giving notice of the recovery of assets and setting a deadline for the filing of proofs of claim.

Once the trustee gives notice by docket entry that assets have been discovered, the expedited abandonment procedure provided by E.D. Tenn. LBR 6007-1(a) is no longer available to the trustee. The trustee must thereafter file a notice of abandonment complying with Federal Rule of Bankruptcy Procedure 6007(a) if the trustee decides to abandon assets.

The addition of the second sentence to E.D. Tenn. LBR 6007-1(a) is to clarify that if a creditor or party in interest files a written request for notice of abandonment, the trustee at that point may no longer utilize the expedited abandonment procedure provided in the rule for no-asset chapter 7 cases, and must file a notice of proposed abandonment, either setting the motion for hearing or utilizing the passive notice procedure of E.D. Tenn. LBR 9013-1(h)(1)(ix), with a 14-day objection period as provided in E.D. Tenn. LBR 9013-1(h)(3)(iii). However, all creditors need not be served; only any party who requested notice, the debtor, and the United States trustee need be served with such a notice of proposed abandonment. Of course, if these parties and the trustee enter into an agreed order for abandonment, after the § 341(a) meeting, it is not necessary for the trustee to file a notice of proposed abandonment. Rather, as clarified in the second sentence added to E.D. Tenn. LBR 6007-1(b), after the § 341(a) meeting the parties may file a motion for entry of an agreed order of abandonment in a chapter 7 no-asset case. This rule, however, does not excuse the service required by any other relief requested in the motion for entry of the agreed order.

(x) motion to limit notices as provided by Fed. R. Bankr. P. 2002(h) or (i);

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(xix) motion for preconfirmation payments by the chapter 13 trustee to a lessor or secured creditor filed in accordance with E.D. Tenn. LBR 3070-1(a), provided the monthly payment does not exceed \$50;

...

(3) *Service.* Except for those ex parte motions listed in (i) through (xii) in paragraph (1) above, a movant utilizing the ex parte procedure must file a certificate evidencing service of the motion and proposed order upon all parties affected by the relief sought. For an application to employ listed in (xx) in paragraph (1) above, the debtor, the debtor's attorney, the panel or standing trustee, and the United States Trustee are parties deemed affected. For a motion for preconfirmation payments listed in (xix) in paragraph (1) above, the debtor, the debtor's attorney, and the chapter 13 trustee are parties deemed affected.

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Comment

In light of the proposed amendment in 2018 for Fed. R. Bankr. P. 9037, "redact" language is added to subdivision (x) under paragraph (1) and the subdivision is renumbered (xiii), with former subdivision (xiii) renumbered (x). Paragraph (3) is also revised such that a certificate of service is now required for a motion to redact and/or restrict access. In light of the proposed change to E.D. Tenn. LBR 3070-1(a), a change is made to (xix) that ex parte is limited to motions requesting monthly preconfirmation payments not to exceed \$50, and a sentence is added under paragraph (3) listing parties deemed affected by such motions.

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

(1)

(xxiv) motion by a chapter 12 or chapter 13 debtor upon plan completion for an order declaring that a secured claim has been satisfied and the lien released under the terms of the plan pursuant to Fed. R. Bankr. P. 5009(d);

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(2) *Passive Notice Legend.* Except as provided in subdivision (d)(2) of this rule, motions 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

Notice is hereby given that:

Pursuant to E.D. Tenn. LBR 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 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.

Your rights may be affected. [If the matter is an objection to claim or supplement to claim, replace the foregoing statement with the following: **Your claim may be reduced, modified, or eliminated.**] **You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

- (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—

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- (iii) motion in a chapter 7 case for relief from the automatic stay or for adequate protection, for which the objection time must be at least 14 days;
- (iv) motion in a chapter 13 case for relief from the automatic stay with respect to collateral to be surrendered under the plan, for which the objection time must be at least 14 days;
- (v) motion pursuant to Fed. R. Bankr. P. 4001(d) for approval of (A) an agreement to provide adequate protection, (B) an agreement to prohibit or condition the use, sale, or lease of property, (C) an agreement to modify or terminate the stay provided for in 11 U.S.C. § 362, (D) an agreement to use cash collateral, or (E) 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;

- (vi) notice of abandonment or motion to compel abandonment under Fed. R. Bankr. P. 6007, for which the objection time must be at least 14 days; and
- (vii) application to employ a professional that also seeks the approval and payment in full of the professional's fees not in excess of \$1,000 and evidences service of the application and proposed order upon the debtor, debtor's attorney, the panel or standing trustee, and the United States Trustee, for which the time for the objection must be at least 7 days.

Comment

This amendment revises the language of subdivision (xxiv) under paragraph (1) to follow amended Fed. R. Bankr. P. 5009(d), but keeps it contingent upon plan completion. If such an order is sought prior to completion of the plan, the motion would need to be set for hearing.

The legend in paragraph (2) is also revised so that it includes the warning language consistent with the foregoing revision to the legend for a notice of hearing.

Under paragraph (3), a 14-day period for objections to notices of or motions to compel abandonment is added at (vi), consistent with Fed. R. Bankr. P. 6007(a) and in light of the proposed 2018 amendment to Fed. R. Bankr. P. 6007(b) that will include an identical 14-day period for objections unless otherwise ordered.

RULE 9036-1. NOTICE BY ELECTRONIC TRANSMISSION

(a) Registered CM/ECF Users. Upon the electronic filing of a document, the ECF system will generate a Notice of Electronic Filing (NEF) that will be automatically transmitted to the filing party and all other parties in the case or adversary proceeding who are Registered Users. This electronic transmission of the NEF by the ECF system constitutes notice or service of the filed document to the Registered Users in the case or proceeding, in place of service by first class mail, postage prepaid, subject to the provisions of Fed. R. Bankr. P. 7004 and 9014(b).

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Comment

This amendment replaces "equivalent to" with "in place of" to remove any perceived ambiguity that the local rule equates electronic service with service by mail.

LOCAL FORM 3015.5

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[CAPTION]

ORDER CONFIRMING CHAPTER 13 PLAN

The chapter 13 plan having been transmitted to scheduled creditors and it having been determined that the plan as finalized complies with 11 U.S.C. § 1325 and should be confirmed, the court directs the following:

1. The plan, a copy of which is attached, is confirmed;
2. If the plan provides for the surrender of property in which a creditor has an interest, whether as a lienholder or as a lessor, the automatic stay under 11 U.S.C. § 362(a) is terminated upon entry of this order to allow the creditor to foreclose upon, repossess, or otherwise proceed *in rem* against that property, and any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted;
3. Property of the estate does not vest in the debtor(s) until completion of the plan as evidenced by the trustee's filing of a certificate of final payment;
4. The attorney for the debtor(s) is awarded the fee set forth in the plan; and
5. All pending objections to confirmation, if any, are resolved, withdrawn, or overruled.

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APPROVED FOR ENTRY BY:

[SIGNATURE AND TYPED NAME
OF CHAPTER 13 TRUSTEE OR ATTORNEY
FOR TRUSTEE, ADDRESS, PHONE NUMBER,
AND BAR NUMBER]

Comment

The addition in paragraph (2) is made because amended Fed. R. Bankr. P. 3015(g)(2) provides that upon confirmation of a chapter 12 or 13 plan “any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.” Paragraph (3) is amended to conform to the provision in new Local Form 3015.1.