

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

PUBLIC NOTICE

**INVITATION FOR COMMENTS ON LOCAL BANKRUPTCY RULES
1006-1; 1006-3 (New); 1017-3, 2002-1, 2090-1; 3011-1, 3015-2, 5005-1,
5007-1 (formerly 5077-1); and 7067-1**

Comments are invited on a proposed revision to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Virginia, as follows:

1. The repeal of Local Bankruptcy Rule 1006-1(D);
2. The promulgation of Local Bankruptcy Rule 1006-3 (new);
3. A revision to Local Bankruptcy Rule 1017-3;
4. A revision to Local Bankruptcy Rule 2002-1;
5. A revision to Local Bankruptcy Rule 2090-1;
6. A revision to Local Bankruptcy Rule 3011-1;
7. A revision to Local Bankruptcy Rule 3015-2;
8. The repeal of Local Bankruptcy Rule 5005-1(F);
9. A revision to Local Bankruptcy Rule 5007-1 (formerly LBR 5077-1); and
10. A revision to Local Bankruptcy Rule 7067-1.

The proposed revision to the Local Bankruptcy Rules is available at the Alexandria, Norfolk, Richmond and Newport News divisions of the Court and may be accessed at the Court's Internet website:

<http://www.vaeb.uscourts.gov> under "Local Rules" > "Public Notice".

Comments may be submitted, by mail, to:

Local Rule Change
c/o William C. Redden
U.S. Bankruptcy Court
1100 East Main Street, Room 310
Richmond, VA 23219-3515

or, by e-mail, at:

Localrules@vaeb.uscourts.gov

Comments will be received by mail or at the Court's website until 5:00 p.m., Thursday, July 20, 2006.

Proposed new language is underlined and deleted language is struck through in the attached proposed revision to the Local Bankruptcy Rules.

Dated: June 21, 2006

William C. Redden
Clerk of Court

PROPOSED REVISION
to the
LOCAL BANKRUPTCY RULES
(Version 6/20/06)

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA



Effective Date: September 1, 2006

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

Proposed Revision to Local Bankruptcy Rules

1. Rule 1006-1 FEES: INSTALLMENT PAYMENTS

(D) *Failure to Pay Installment* [Repealed]

~~(1) **Rejection of Petition:** If a petition is filed without full payment of the filing fee or without an Application to Pay Filing Fee in Installments, or if an Application to Pay Filing Fee in Installments does not conform with the requirements of FRBP 1006 and this Local Bankruptcy Rule, the Clerk shall reject the petition.~~

~~(2) **Dismissal of Case:** Except as provided in LBR 1017-3, the Clerk shall issue an order of dismissal in any case where the initial installment payment required under FRBP 1006 and paragraph (B) of this Local Bankruptcy Rule has not accompanied the filed petition. In any case where a subsequent installment payment has not been received by the due date, the Clerk shall issue an order of dismissal.~~

Comments

1006-1 LBR 1006-1(D) is repealed in light of new LBR 1006-3.
[Change effective 9/1/06.]

2. Rule 1006-3 PAYMENT OF FILING FEES; REMEDIES FOR NONPAYMENT

(A) **Payment of Filing Fees:** All petitions, complaints, pleadings and other papers shall be accompanied by the proper filing fee.

(B) **Rejection of Partial Payments:** The Clerk is authorized to reject any partial payment of any filing fee but shall not reject the petition, complaint, pleading or other paper.

(C) **Dismissal for Nonpayment:** If a petition, complaint, pleading, or other paper is not accompanied by the proper filing fee or an application to pay installments with the first installment, the Clerk will give notice to cure the filing fee deficiency. Unless the filing fee is paid or the party requests a hearing on the matter by the close of business on the business day after the notice to cure is given, the Clerk will dismiss the petition or complaint or strike the pleading or other paper without further notice.

(D) **Form of Notice and Notice Period:** The Clerk may give notice personally, electronically, telephonically or by mail. The notice period shall commence for personal, electronic and telephonic notice when the notice is given and shall commence for mailed notices three days after the notice is mailed.

Comments

1006-3 This rule establishes a single rule for payment of filing fees and the procedure the Clerk will follow in the event of nonpayment of a required filing fee. It supersedes LBR 1006-1(D) and LBR 5005-1(F).

3. Rule 1017-3 SUSPENSION OF AUTOMATIC DISMISSAL

Rule to Show Cause in Lieu of Dismissal in Certain Cases: Notwithstanding the provisions of LBR 1006-1, 1007-1(A), 1007-3-(C), 2003-1(B), 3015-1(G), 3015-2(~~C~~)(H) and 3070-1(C), the Clerk shall not enter an order dismissing the debtor's case if the case was previously converted from any other chapter of title 11 or if the debtor was a debtor in another case pending at any time within 12 months preceding the filing of the present case. In such a case, the Clerk shall, in lieu of dismissal, issue a rule to show cause to the debtor and set the rule for a hearing.

Comments

1017-3 LBR 3015-2 has been amended. The revision to LBR 1017-3 conforms to that amendment. [Change effective 9/1/06.]

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

(C) Notice by Publication

(1) **Place of Publication:** All notices requiring advertisement shall be published at least once unless otherwise required by rule or statute, and such notice shall be published in newspapers of general circulation as follows:

(a) In proceedings at Alexandria, in the Alexandria Gazette packet, the *Alexandria Journal* *Washington Examiner* or the *Washington Post*.

Comments

2002-1 LBR 2002-1(C)(1)(a) has been amended to substitute the *Washington Examiner* for the *Alexandria Journal*. The *Alexandria Journal* no longer is being published and its place has been taken by the *Washington Examiner*. [Change effective 9/1/06.]

5. RULE 2090-1 ATTORNEYS – ~~ADMISSION~~ RIGHT TO PRACTICE BEFORE THE COURT

(B) **Qualifications for Admission and the Right to Practice Before the Court:** An attorney, to qualify for admission and to maintain the right to practice before this Court, shall be ~~a member in good standing of the Bar of the State of Virginia and administered the oath of admission; upon filing of an acceptable application to practice before the Court; and shall be and at all times must remain a member in good standing of the Bar of the Commonwealth of Virginia.~~

(F) **Attorneys Filing Pleadings:** All counsel making an appearance or presenting papers, suits or pleadings for filing; other than a request for notices under FRBP 2002(g), must be members in good standing of the Bar of this Court, or and members in good standing of the Bar of the Commonwealth of Virginia or the state in which he or she is admitted. Attorneys who are not members of the Bar of this Court must have counsel who are is a members in good standing of the Bar of this Court join in the pleading by endorsement. Any counsel who is a member in good standing of the Bar of this Court as defined above and who joins in a pleading will be held accountable for the case by the Court.

Comments

2090-1 Paragraphs (B) and (F) of this Local Bankruptcy Rule have been amended to explicitly provide that an Attorney must be and remain a member in good standing of the Bar of the Commonwealth of Virginia or the state in which the attorney is admitted. [Change effective 9/1/06.]

6. RULE 3011-1 UNCLAIMED FUNDS

(B) *Disposition of Unclaimed Funds*

(3) *Requirements for any other individuals representing the interest of creditor/claimant:*

....

As provided for in Local Bankruptcy Rule 9013-1(M)(1), notice of the motion shall be in substantial compliance with Official Form 20A, allowing 20 days' notice for written responses objecting to the relief requested and must contain the "NOTICE" language substantially in the form set forth therein. Movant must sign a certificate of mailing reflecting that the motion was served on the United States Attorney for the Eastern District of Virginia and on the United States Trustee.

....

Comments

3011-1 The third paragraph to LBR 3011-1(B)(3) is amended to make explicit that the procedures set forth in LBR 9013(M)(1) must be followed to meet the requirements set forth in LBR 3011-1(B)(3). [Change effective 9/1/06.]

7. RULE 3015-2 CHAPTER 13 PLAN REQUIREMENTS

(F) *Modified Chapter 13 Plan and Related Motions*

(1) *Procedure where no plan has been confirmed*

(c) *Objections to Confirmation of Modified Chapter 13 Plan and Related Motions:* If a modified Chapter 13 Plan and Related Motions is filed, any objections must be filed not later than ten (10) days prior to the date set for the confirmation hearing. The debtor must obtain a new confirmation hearing date from the clerk- and must include the new date, time and location on the first page of the form of Chapter 13 Plan and Related Motions. The new confirmation hearing date must allow at least 35 days' notice and the debtor shall give the trustee and all creditors notice of the date, time, and place of the confirmation hearing.

(2) *Procedure where plan has been confirmed*

(b) *Where modification is requested by the debtor:* If modification of a confirmed plan is sought by the debtor, modification must be requested by filing and distributing a modified Chapter 13 Plan and Related Motions and by giving special notice required by paragraph (B) of this rule. The special notice required by paragraph (B) of this rule need not be given, however, if a Chapter 13 Plan and Related Motions has previously been confirmed providing the identical treatment of the secured creditor's claim. The debtor must obtain a new confirmation hearing date from the clerk. The new confirmation hearing date must allow at least 35 days' notice and the debtor shall give the trustee and all creditors notice of the date, time, and place of the confirmation hearing- as set forth on the first page of the form of Chapter 13 Plan and Related Motions. Any objection to the modified plan must be filed not later than ten (10) days prior to the date set for the confirmation hearing.

Comments

3015-2 Subparagraphs (F)(1)(c) and F(2)(b) have been amended to include the date, time, and place of the confirmation hearing when a modified plan is being filed. The first page of the uniform form of Chapter 13 Form of Plan and related Motions has been revised to include this change. [Changes effective 9/1/06.]

8. RULE 5005-1 FILING OF PETITION, PLEADINGS AND OTHER PAPERS

(F) *Rejection of Petitions, Pleadings and Other Papers*: ~~[Repealed] The Clerk shall reject any petition, pleading, or other paper not accompanied by the proper filing fee.~~

Comments

5005-1 Paragraph (F) is repealed in light of new LBR 1006-3.
[Change effective 9/1/06.]

9. ~~RULE 5077-1~~ 5007-1 TRANSCRIPTS

{Proposed by Clerk's Office and Concurred in by LBR Standing Committee}

(A) *Certification of Record by Reporter*: The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and file them promptly with the Clerk within twenty-four hours of the hearing. Where requests for transcripts are made, the original notes, tape or record shall be filed within thirty days after the request, unless the Court orders otherwise.

(B) *Copies of Transcripts Available to Public*: The Clerk shall provide copies of any filed transcript to the public upon request and the payment of prescribed copy fees, unless the Court orders that copies of the transcript not be made or that the transcript be sealed.

(C) *Use of Transcripts by Multiple Parties*: [Repealed]

(D) *Perfecting Record on Appeal*: [Repealed]

(E) *Payment for Transcripts*: The obligation to pay the reporter for any and all transcripts shall be the joint and several personal obligation of the attorney and the party for whose benefit the transcript was obtained to the extent so ordered. Any charges for a transcript shall be payable upon the completion of the transcript or any segment thereof when a proper bill for same has been submitted by the reporter.

(F) *Public Access to Transcripts Filed in CM/ECF*: To promote electronic access to transcripts while also protecting personal privacy and other legitimate interests, the following procedure provides a means by which personal data identifiers may be redacted from a transcript before it is made available by electronic means to the public:

(1) *Filing Joint Notice of Redaction with the Clerk; Clerk's Duty to Make Transcript Electronically Available*

(a) Unless otherwise ordered by the Court, within 21 calendar days of the reporter's filing of the official transcript pursuant to 28 U.S.C. §753, in the manner specified by the Clerk, the parties shall inform the Court, by filing a joint notice of redaction with the Clerk, of the parties' intent to redact personal data identifiers from the electronic transcript of a court proceeding. Contemporaneously, the parties shall submit a joint statement to the reporter indicating where personal data identifiers appear in the transcript. Such personal data identifiers include individual: Social Security numbers; financial account numbers; names of minor children; dates of birth; and home addresses. The reporter shall make the identified partial redaction(s) in the manner prescribed in subparagraph (F)(3) of this Local Bankruptcy Rule and file the redacted transcript in the manner specified by the Clerk.

(b) Except as otherwise provided in subparagraph (F)(2) or subparagraph (F)(4), where neither a joint notice nor a motion for additional redaction(s), respectively, is filed within the specified 21-day period set forth in subparagraph (F)(1)(a) of this Local Bankruptcy Rule, the Court will

deem that no redaction of personal data identifiers from the transcript is necessary. The transcript then may be made remotely electronically available by the Clerk at the close of the specified twenty-first calendar day unless the Court, for good cause related to the application of the Judicial Conference policy on privacy and public access to electronic case files, finds that the transcript should not be made available electronically for up to a period of 60 days.

(2) **Absence of Agreement to a Joint Notice of Redaction:** If the parties fail to agree to the joint notice of redaction described in subparagraph (F)(1)(a) of this Local Bankruptcy Rule, a party may file a motion within ten days following the specified 21-day period requesting that the Court determine the extent to which, if any, the redaction of a personal data identifier(s) shall be permitted. Prior to the expiration of the specified 21-day period, a party shall inform the Court by filing a notice of intent to file such a motion. Upon the timely filing of the notice of intent and motion by a party and pending further order of the Court, the Clerk shall not make the transcript available by electronic means to the general public. If the Court so orders, a party shall submit to the reporter a statement indicating where personal data identifiers appear in the transcript. The reporter shall make the ordered partial redaction(s) in the manner prescribed in subparagraph (F)(3) of this Local Bankruptcy Rule and file the redacted transcript in the manner specified by the Clerk.

(3) **Partial Redaction of Personal Data Identifiers:** To the extent provided for in subparagraph (F)(1)(a) or (F)(2) of this Local Bankruptcy Rule, the reporter shall partially redact the following personal data identifiers from the electronic transcript:

(a) **Social Security Numbers:** If an individual's social security number must be included, only the last four digits of that number should be included.

(b) **Financial Account Numbers:** If a financial account number must be included, only the last four digits of that number should be included.

(c) **Dates of Birth:** If an individual's date of birth must be included, only the year should be used.

(d) **Names of Minor Children:** If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(e) **Home Addresses:** If an individual's home address must be included, only the city and state should be used.

(4) **Motion to Request Redaction(s) in Addition to Personal Data Identifiers:** During the 21-calendar-day period referenced in subparagraph (F)(1) of this Local Bankruptcy Rule, or longer if the Court so orders, a party may file a motion requesting any redaction(s) to the transcript in addition to the personal data identifiers set forth at subparagraph (F)(3) herein. The transcript shall not be remotely electronically disseminated until the Court has ruled upon any such motion. The reporter shall make any additional redaction(s) ordered by the Court and file the redacted transcript in the manner specified by the Clerk.

(5) **Clerk's Duty to Make Copies of Filed Transcript Available to Public:** The requirement set forth in paragraph (B) of this Local Bankruptcy Rule that the Clerk make copies of any filed transcript available to the public shall first conform to the applicable requirements set forth in subparagraphs (F)(1), (F)(2) and (F)(3) of this Local Bankruptcy Rule.

Comments

5077-1(C)-(D) The Administrative Office of the U.S. Courts has provided guidance to the courts on the statutory and policy requirements for copying official court transcripts of court proceedings filed with the clerk of court.

Accordingly, paragraphs (C) and (D) of LBR 5077-1 are repealed. [Change effective 4/1/03.]

5007-1 Former Local Bankruptcy Rule 5077-1 is re-designated as Local Bankruptcy Rule 5007-1. Paragraphs (A) through (E) remain unchanged. Paragraph (F) is new. It is intended to help protect an individual's privacy as a means to balance privacy concerns with electronic case management procedures involving electronic access by the public to transcripts filed with the Clerk. [Re-designated Rule 5007-1 and new Paragraph (F) effective 9/1/06.]

10. **RULE 7067-1 DEPOSIT IN AND DISBURSEMENT OF COURT REGISTRY FUNDS**

(A) ***Order Required:*** The Clerk shall deposit into the registry of the Court any sum so directed by order.

(B) ***District Registry Procedure and Form of Order:*** The order proponent shall follow the District Registry Procedure. In addition to an appropriate caption and attorney identification, a proposed Order Directing Deposit shall include the following elements:

- (1) the name, address and telephone number of the person or other entity paying the money into the registry of the Court,
- (2) the name, ~~and~~ address ~~and, if applicable, employer tax number~~ of the person or other entity for whom the money is being held, ~~and~~
- (3) the sum of money and date to be paid into the Court, ~~;~~
- (4) ~~provision for the payment, when funds are disbursed, of a fee of ten percent of all interest earned by the funds while in the Court's control, and~~
- (5) ~~the desired depository and specific investment instrument with the rate of interest expected to be earned thereon. If no specific deposit or investment type is specified, the Clerk will deposit the funds in an interest-bearing savings account.~~

(C) ***Sample Order of Deposit:*** ~~The Clerk's Office shall make available upon request a sample order satisfying the requirements of this Local Bankruptcy Rule.~~ An order satisfying the requirements of this Local Bankruptcy Rule is available on the Court's website.

(D) ***Investment:*** The Clerk shall deposit the funds in an interest-bearing savings account.

(E) ***Provision for Payment:*** In addition to an appropriate caption and attorney identification, a proposed Order Directing Disbursement shall include the following elements:

- (1) the sum of money to be paid to the person or other entity receiving the money, along with any interest accrued thereon, less the Court's fee, as authorized by the Judicial Conference of the United States, and
- (2) the name and address of the person or other entity receiving the money.

(F) ***Order Directing Disbursement:*** An order satisfying the requirements of this Local Bankruptcy Rule is available on the Court's website.

Comments

7067-1 Paragraph (B) amends the elements of the Order Directing Deposit. Paragraph (C) is amended to advise that the order is available on the Court's website (at "Bankruptcy Forms"). Paragraphs (D) and (E) are new. Paragraph

(F) is new. The form referenced at (F) also is available on the Court's website (at "Bankruptcy Forms"). [Change effective 9/1/06.]