

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

PUBLIC NOTICE

ENTRY OF STANDING ORDER 23-23

**ADOPTING A REVISION TO THE LOCAL BANKRUPTCY RULES, AS TO
AMENDED LOCAL BANKRUPTCY RULES 4001(a)-1, 7055-1, AND 9013-1
EFFECTIVE DECEMBER 1, 2023**

Effective December 1, 2023, the Court has adopted a revision to the Local Bankruptcy Rules regarding amended Rules 4001(a)-1(H)(2)(b), 7055-1(A), and 9013-1(G)(3), (H)(2), and (H)(4). The new Comments following each of these Rule amendments provide explanations concerning the referenced technical and clarifying changes set forth therein.

William C. Redden
Clerk of Court

November 29, 2023

Attachment

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

In re

Revision to Local Bankruptcy Rules
as to Technical and Clarifying
Amendment to Rules 4001(a)-1,
7055-1, and 9013-1

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Standing Order 23-23

**ORDER ADOPTING TECHNICAL AND CLARIFYING AMENDMENTS TO
LOCAL BANKRUPTCY RULES 4001(a)-1, 7055-1, AND 9013-1**

Local Bankruptcy Rules 4001(a)-1(H)(2)(b), 7055-1(A), and 9013-1(G)(3), (H)(2), and (H)(4) are amended, as follows:

A technical amendment is made to Local Bankruptcy Rule 4001(a)-1(H)(2)(b).

A clarifying amendment is made to Local Bankruptcy Rule 7055-1(A).

Local Bankruptcy Rule 9013-1 is amended, as follows:

A clarifying amendment is made to Rule 9013-1(G)(3).

The amendment to Rule 9013-1(H)(2) adds applications for payment of unclaimed funds to those filings that do not require a hearing.

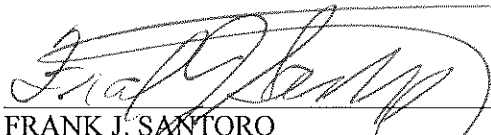
The amendment to Rule 9013-1(H)(4) states more precisely the required appearances of unrepresented parties.

NOW THEREFORE, IT IS ORDERED that:

Effective December 1, 2023, the above-referenced amendments be and same hereby are adopted.

Attachment

FOR THE COURT:


FRANK J. SANTORO
Chief United States Bankruptcy Judge

Dated: November ^{29th} 2023

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

**AMENDMENTS TO LOCAL BANKRUPTCY RULES 4001(a)-1,
7055-1, AND 9013-1**



Effective: December 1, 2023
(Ver. 11/27/2023)

RULE 4001(a)-1 RELIEF FROM AUTOMATIC STAY

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(H) *Relief from Codebtor Stay in Chapter 13 Cases*: Motions for relief from a stay of action against a codebtor in a chapter 13 case are contested matters and are governed by FRBP 9014, 11 U.S.C. §1301 and these Local Bankruptcy Rules. The motion shall clearly state in the caption of the motion the subsection of 11 U.S.C. §1301 under which the party is proceeding.

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(2) Service and Time for Response: Service shall be as set forth in paragraph (F) of this Local Bankruptcy Rule. The notice served on the codebtor in any relief action shall include notice of the response period.

....

(b) As provided for in 11 U.S.C. §1301(d), the stay shall automatically terminate with respect to a request under 11 U.S.C. §1301(c)(2) unless a response is filed and served no later than 20 days after the filing of the request. In a relief action under 11 U.S.C. §1301(c)(2), the notice shall include the following language: “If you do not file a written response by the deadline shown, the law provides that the stay protecting you from further legal action against you by this creditor will automatically terminate as provided for in 11 U.S.C. §1302~~1~~(d).”

Comments

4001(a)-1(H) The amendment to this rule corrects a typographical error in the relevant statutory citation. [Change effective 12/01/23.]

RULE 7055-1 ENTRY OF DEFAULT AND ENTRY OF JUDGMENT BY DEFAULT

(A) *Entering a Default by the Clerk*: To have the Clerk enter a default pursuant to FRCP 55, as incorporated by FRBP 7055 and FRBP 9014, in an adversary proceeding or a contested matter, the party seeking default shall file with the Clerk a motion for entry of default accompanied by an Affidavit of Default or a declaration signed under penalty of perjury or a certification by counsel setting forth the facts related to the party or parties in default. These facts must include:

(1) The name of the party against whom default is sought.

- (2) A statement as to the date of issuance of the summons and the date and manner of service of the summons and complaint or motion.
- (3) The date of filing of the certificate of service of the summons and complaint or motion upon the party.
- (4) A statement that no answer or motion has been filed within the time limit fixed by FRBP 7012(a) or the Court.
- (5) A statement that the party is or is not in military service or that the movant is unable to determine the party's military status, pursuant to the Service Members Civil Relief Act of 2003, 50 U.S.C. Appendix §§501-596. (If the party is in the military, or may be, the party is afforded certain protections as set forth at 50 U.S.C. Appendix §521.)
- (6) A statement that the party is not a minor or an incompetent person or if the party is a minor or an incompetent person that such party is represented by a general guardian, conservator or other like fiduciary who has appeared.

~~In consultation with the Court, the Clerk shall review the motion, the affidavit, declaration or certification to determine whether proper service of the summons and complaint was made pursuant to FRCP 4, as incorporated by reference in FRBP 7004(a), and whether the time to answer or file a motion has passed. If the affidavit, declaration or certification is in proper order, the Clerk will proceed to enter a default. As entry of default is a ministerial act, no response deadline is required for a motion for entry of default, and the Clerk will not await the expiration of any response deadline, if one is provided, to enter a default. Pursuant to FRCP 55(a), the party seeking default must request entry of default prior to moving for default judgment. ~~Consistent with FRCP 9013 and LBR 9013-1(A), service by the movant of the motion on the party against whom default is sought must be effected in the manner set forth in FRBP 7004, which shall be reviewed by the Clerk, in consultation with the Court.~~~~

Comments

7055-1(A) The amendments to this rule clarify the responsibility of the Clerk to evaluate motions for entry of default. The rule is further amended to provide that the movant does not need to provide a response period since the Clerk's entry of default is a ministerial act. [Change effective 12/01/23.]

RULE 9013-1 MOTIONS PRACTICE

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(G) Responses to Motions

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(3) Time for filing response and memorandum

(a) ~~The moving party must provide~~ ~~The opposing party may file a~~ deadline to file a response or objection, ~~with a supporting~~ memorandum of at least—

(i) ~~no later than~~ 21 days after service of the motion unless the motion relates to a matter for which another notice period is specified under the Federal Rules of Bankruptcy Procedure or these Local Bankruptcy Rules, or the time is shortened or extended by the order of the Court, in which case no later than the period set forth in such rule or order; or

(ii) ~~no later than~~ 1 business day prior to the hearing on the motion if a hearing has been set on an expedited basis under paragraph (N) of this Local Bankruptcy Rule, unless excused, waived or otherwise ordered by the Court. Such response shall be served on all required parties using a method reasonably calculated to provide timely notice to all affected parties.

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(H) Hearings:

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(2) A hearing is required: The following motions require a hearing:

(a) Motions filed by *pro se* individuals other than applications for payment of unclaimed funds, fee waiver applications, applications to pay filing fee in installments, and first motions to extend time to file lists, schedules, statements, or chapter 12/13 plans within the parameters of these Local Bankruptcy Rules;

(b) Any request for relief on a *nunc pro tunc* basis;

(c) Any matter not included on the Negative Notice List [see LBR 9013-1(H)(1)].

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(4) **Required Appearances:** The following parties must appear at any scheduled hearing, and failure to appear when required will be deemed as consent to an adverse ruling:

(a) Counsel for the movant or the unrepresented moving party, ~~if unrepresented~~;

(b) Counsel for the opposing party or the unrepresented opposing party, ~~if unrepresented~~;

(c) The chapter 13 trustee assigned to the case or counsel for the chapter 13 trustee if the hearing related to a chapter 13 case;

(d) The United States trustee, Assistant United States trustee or counsel for the United States trustee if the hearing relates to a chapter 11 case or a notice of possible dismissal due to a case deficiency in a chapter 7 case; and

(e) Any party required to appear at a scheduled hearing by Court order.

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Comments

9013-1(G)(3) The language of this rule is amended to enhance clarity regarding the minimum response period to be provided if another rule does not specify a different response period. [Change effective 12/01/23.]

9013-1(H)(2) The amendment to this rule adds applications for payment of unclaimed funds filed by unrepresented individuals to the list of enumerated items that do not require a hearing. [Change effective 12/01/23.]

9013-1(H)(4) The text of this rule is modified to more precisely indicate the required appearances of unrepresented parties. [Change effective 12/01/23.]