

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

**PUBLIC NOTICE**

**INVITATION FOR COMMENT ON AMENDMENTS TO LOCAL BANKRUPTCY RULES 2003-1, 7067-1, 9010-1, AND 9016-1 AND NEW LOCAL BANKRUPTCY RULE 1007-1(J)**

Comments are invited to amendments to Rules 2003-1, 7067-1, 9010-1, and 9016-1 and new Rule 1007-1(J) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia. The Local Bankruptcy Rules, as amended, take effect September 3, 2013.

The above cited amendments to the Local Bankruptcy Rules will be available at the Alexandria, Norfolk, Richmond, and Newport News divisions of the Court and may be accessed at the Court's Internet web site: <https://www.vaeb.uscourts.gov/wordpress/> under Virginia Eastern News.

Comments may be submitted, by mail, to:

Local Rules Change  
c/o William C. Redden  
U.S. Bankruptcy Court  
701 East Broad Street  
Suite 4000  
Richmond, VA 23219-1888

or, by e-mail, at:

[localrules@vaeb.uscourts.gov](mailto:localrules@vaeb.uscourts.gov)

Comments will be received by mail or at the Court's web site until 5:00 P.M., local time, Friday, July 5, 2013.

William C. Redden  
Clerk of Court

Date: June 5, 2013

# **UNITED STATES BANKRUPTCY COURT**

**for the**

**EASTERN DISTRICT OF VIRGINIA**

**AMENDMENTS TO**

**LOCAL BANKRUPTCY RULES**

**2003-1, 7067-1, 9010-1, AND 9016-1**

**AND NEW LOCAL BANKRUPTCY RULE**

**1007-1(J)**



**Effective September 3, 2013**

(Version 06/05/13)

## RULE 1007-1 LISTS, SCHEDULES AND STATEMENTS

**(J) Chapter 13 Debtor's Statement of Completion of Instructional Course Concerning Personal Financial Management:** Pursuant to FRBP 9006(c), and as governed by FRBP 1007(c), the time to file the chapter 13 debtor(s) statement of completion of a course concerning personal financial management shall be deemed enlarged, and the chapter 13 debtor(s) shall file the statement of completion of a course concerning personal financial management within the time specified in LBR 4008-2(A) for filing the Debtor(s) Certification of Compliance with 11 U.S.C. §1328.

### Comments

1007-1(J) Paragraph (J) is new and makes the time to file the Chapter 13 Debtor's Statement of Completion of Instructional Course Concerning Personal Financial Management the same as that specified in LBR 4008-2(A).  
[New paragraph (J) effective 09/03/13.]

## RULE 2003-1 MEETING OF CREDITORS & EQUITY SECURITY HOLDERS

(A) *Policy*: [Repealed]

(B) *Dismissal for Failure to Appear*

(1) *Notice of Possible Dismissal*: Notice of possible dismissal for failure to attend the meeting of creditors shall be provided in the notice of §341 meeting.

(2) *Chapter 12 and 13 Cases; No Asset Chapter 7 and 11 Cases*

(a) Except as provided in LBR 1017-3, upon certification by the United States trustee that either debtor or debtor's counsel has not appeared at a meeting of creditors, ~~or has appeared not ready to proceed~~, in a chapter 12 or 13 case, the Clerk shall issue an order dismissing the case.

(b) Except as provided in LBR 1017-3, upon certification by the United States trustee that either debtor or debtor's counsel has not appeared at a meeting of creditors, ~~or has appeared not ready to proceed~~, in a chapter 7 or 11 case, and it further appears, based upon information in the debtor's schedules or other reports filed by the debtor or debtor's counsel, that there will be no assets available for distribution to creditors, the Clerk shall issue an order dismissing the case.

(3) *Asset Chapter 7 and 11 Cases*: In a chapter 7 or 11 case, upon certification by the United States trustee that either debtor or debtor's counsel has not appeared at a meeting of creditors, ~~or has appeared not prepared to proceed~~ and that it appears that there may be assets available for distribution to creditors, the Clerk shall issue a rule to show cause to the debtor or counsel, as the case may be, and set the rule for a hearing.

(4) **Rescheduled Meeting of Creditors; Notice:** If the order dismissing the case is subsequently vacated by the Court, then the attorney for the debtor(s), or the debtor(s), if *pro se*, shall forthwith obtain from the judge assigned to the case or the Clerk a new date and time for a rescheduled meeting of creditors. Within 7 days of obtaining a new date and time for a rescheduled meeting of creditors, the attorney for the debtor(s), or the debtor(s), if *pro se*, shall serve written notice to all creditors and other parties in interest and file proof of service with the Clerk. Notice shall be given in a form approved by the Clerk.

#### **Comments**

2003-1(B) The phrase “or has appeared not ready to proceed” has been removed where it appears in paragraph (B). [Change effective 09/03/13.]

### **RULE 3011-1 UNCLAIMED FUNDS**

(A) **Deposit of Unclaimed Funds:** All unclaimed funds collected by the Court shall be immediately deposited into the United States Treasury and not into the registry of the Court.

(B) **Disposition of Unclaimed Funds**

(1) **Requirements for Pro Se Creditor/Claimant - Self Representation-** A request for return of an unclaimed dividend must be in writing and in the form of a motion filed with the Court. A Form W-9, Request for Taxpayer Identification Number and Certification, also must be completed, signed and filed with the motion. The exempt payee box should be checked on the Form W-9. The form and accompanying instructions are accessible at the Bankruptcy Forms page on the Court’s Internet web site. Creditor/claimant must sign a certificate of mailing reflecting that the motion was served on the United States attorney for the Eastern District of Virginia, pursuant to 28 U.S.C. §2042, and on the United States trustee. The motion must state:

- (a) the name, address, telephone number and a brief history of the creditor from the filing of the claim to present (to reflect possible reasons for the funds not being deliverable at the time of original distribution);
- (b) whether the claim has been assigned to the creditor, and, if so, copies of all documents evidencing assignment must be appended to the motion; and
- (c) whether or not the creditor/claimant believes that any other party may be entitled to the funds.

The motion must contain a certificate of a notary public, which bears the seal of the notary, that such notary has examined the motion and documents presented by the creditor/claimant establishing identity.

If the creditor/claimant is a corporation, it must be represented by a member of the bar of this Court. In addition, if the creditor/claimant is a successor corporation, creditor/claimant shall provide documents establishing the chain of

ownership of the original corporate claimant as proof of entitlement to the claim. The motion must state whether or not the moving party believes that any other party may be entitled to the funds.

As provided for in LBR 9013-1(M)(1), notice of the motion shall be in substantial compliance with official Form 20A, allowing 21 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.

(2) ***Requirements for the Representative of the Estate of a Deceased Claimant:*** The representative must comply with all requirements in paragraph (B)(1) of this Local Bankruptcy Rule. Certified copies of all probate documents to substantiate the representative's right to act on behalf of the decedent's estate must be provided as proof of entitlement.

(3) ***Requirements for any other individual representing the interest of creditor/claimant:*** The representative must be an attorney admitted to practice in accordance with these Local Bankruptcy Rules. The attorney must file a motion with the Court for an order authorizing return of an unclaimed dividend pursuant to FRBP 9013. A Form W-9, request for Taxpayer Identification Number and Certification, also must be completed, signed and separately submitted, via email or mail, to the Finance Department (Form W-9 and accompanying instructions are accessible on the Court's Internet web site's Bankruptcy Forms page). The exempt payee box should be checked on Form W-9. The motion must contain the name, address, telephone number and brief history of the creditor from the filing of the claim to present (to reflect possible reasons for the funds not being deliverable at the time of original distribution). If applicable, proof of any sale of the company, new and prior owners, and a copy of the terms of any purchase agreement or stipulation by prior and new owners of right of ownership to the unclaimed funds must be provided. If the claim has been assigned to the claimant, copies of all documents evidencing assignment must be appended to the motion.

The motion must state whether or not the moving party believes that any other party may be entitled to the funds.

As provided for in LBR 9013-1(M)(1), notice of the motion shall be in substantial compliance with Official Form 20A, allowing 21 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.

An original power of attorney from the creditor/claimant authorizing the attorney to represent the interest of the creditor/claimant must be attached to the motion.

(4) ***Action on Motion:*** Twenty-one days following receipt of the above documentation,

and if no objections have been filed, the Clerk shall prepare and submit the appropriate order to the Court. Any payment made to a claimant represented by an attorney will be issued jointly to claimant and the attorney and will be mailed to the attorney.

(5) *All creditors/claimants*: Pursuant to the Vendor Administration and 1099 Issuance Procedures promulgated by the Administrative Office of the United States Courts, the Court requires that each creditor/claimant (the rightful owner of record) complete a Form W-9, Request for Taxpayer Identification Number and Certification, to facilitate the accurate preparation of Court-generated Forms 1099-MISC, Miscellaneous Income, and 1099-INT, Interest Income, as required by the United States Internal Revenue Code. Failure to complete, sign and return a Form W-9 may result in non-payment.

#### **Comments**

3011-1 Paragraph (B)(1) and (3) are amended to conform to the Vendor Administration and 1099 Issuance Procedures promulgated by the Administrative Office of United States Courts. Paragraph B(5) is new. [Changes effective 09/03/13.]

3011-1 The last sentence of the third paragraph in paragraph (B)(1) is new. The fourth paragraph in paragraph (B)(1) is new and makes explicit that the procedures set forth in LBR 9013-1 (M)(1) must be followed to meet the requirements set forth in LBR 3011-1(B)(1). [Changes effective 09/03/13.]

#### **RULE 7067-1 DEPOSIT 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 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.

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

(D) ***Investment Deposit***: The Clerk shall deposit the funds in ~~an interest bearing savings account.~~ accordance with the procedures and guidelines set out by the Administrative Office of the United States Courts.

(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

(1) 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 (D) is amended to remove the requirement that Registry funds be deposited by the Clerk in an interest bearing account and further is amended to add that the deposit of such funds shall be in "accordance with the procedures and guidelines set out by the Administrative Office of the United States Courts." Paragraph (E)(1) is amended to remove the reference to interest accrued on any such sum of money along with the reference to the Judicial Conference of the United States' authorized Court's fee. [Changes effective 09/03/13.]

### **RULE 9010-1 REPRESENTATION AND APPEARANCES; POWERS OF ATTORNEY**

***Requirement for Counsel:*** Except for filing or withdrawing a proof of claim, notice of mortgage payment change, notice of postpetition mortgage fees, expenses, and charges, response to a notice of final cure payment, request for notices or notice/service, notice of appearance, reaffirmation agreement, creditor change of address, transfer of claim or a transcript of court proceedings, no party or entity other than a natural person acting in his or her own behalf or, to the extent permitted by §304(g) of Pub.L. 103-394, a child support enforcement agency, may appear in a bankruptcy case or proceeding, sign pleadings, or perform any act constituting the practice of law except by counsel permitted to appear under LBR 2090-1. This Local Bankruptcy Rule applies to corporations, partnerships, limited liability companies, associations, and trusts, as well as to individuals acting in a representative capacity (such as under a power of attorney) for another. Any petition, pleading or paper, other than those set forth in this Local Bankruptcy Rule, filed on behalf of an entity that is not a natural person acting in his or her own behalf and not signed by counsel permitted to appear under LBR 2090-1 shall be stricken by the Clerk, or in the case of a petition, dismissed, unless the deficiency is cured within 14 days of the mailing or delivery of a notice of deficiency.

#### **Comments**

9010-1 This amendment adds three items to the list of items that may be filed with the Court without legal representation. [Changes effective 09/03/13.]

## RULE 9016-1 SUBPOENAS

(A) **Request for Subpoena:** Requests for subpoenas shall be in writing and, except as provided in paragraph (G) with respect to a subpoena for a deposition to be taken in a proceeding pending in another jurisdiction, signed by counsel qualified to practice in this Court and noted of record in the action in which the subpoenas are to issue. Attorneys admitted to practice in this Court may also issue and sign a subpoena on behalf of:

- (1) a court in which the attorney is authorized to practice or
- (2) a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice.

Individuals appearing *pro se* may apply for subpoenas in their own behalf.  
Each request for subpoena shall:

- ~~(1) be accompanied by a subpoena which has been completed except for issuance by the Clerk, and~~
- ~~(2) unless the party is exempt therefrom, be accompanied by a check made payable to the witness for at least one day's attendance plus mileage at the rate allowed by law.~~

(B) **Return Date of Subpoenas:** All subpoenas shall be made returnable to the place, date and time of trial or hearing unless otherwise ordered by the Court.

(C) **Service of Subpoenas:** Unless the party requesting same is:

- (1) authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. §1915, or is a seaman authorized to proceed under 28 U.S.C. §1916,
- (2) the United States or an officer or agency of the United States or
- (3) otherwise ordered by the Court,

all subpoenas shall be served by a person who is not a party or otherwise interested in the proceeding and is not less than 18 years of age. Proof of service by such person shall be made as provided for proof of service for summons and complaint in FRBP 7004(a). The person serving the subpoena shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the subpoena. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to the party summoned the fee for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Attorneys and individuals appearing *pro se* shall file a proof of service with a certificate that all required witness fees and expenses were tendered with the subpoena requiring the attendance of the witness. Mileage shall be computed and tendered even

though the witness to be subpoenaed lives within the city limits. The United States marshal, Deputy United States marshal, or any other person serving subpoenas shall do so only in strict compliance with this Local Bankruptcy Rule, ~~except that a party authorized to proceed *in forma pauperis* need not tender witness and mileage fees.~~

### **Comments**

9016-1 Paragraph (A) is amended to remove the requirement that a check for witness and mileage fees accompanies a request for subpoena. In lieu thereof, a certificate now must accompany the filed proof of service stating that any such required fees had been served with the subpoena. [Change effective 09/03/13.]

9016-1 Paragraph (C) is amended by deleting the provision that exempted a party proceeding *in forma pauperis* from tendering witness and mileage fees. [Change effective 09/03/13.]