

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

PUBLIC NOTICE

INVITATION FOR COMMENT ON AMENDMENTS TO

LOCAL BANKRUPTCY RULES 1006-1(C), 1007-1(J), 1017-3, 2003-1(B), 2016-1(C), 3011-1(B), 4001(a)-1(F) and (H), 4002-1(A) and (B), 4008-2(B), 5005-1(C) and (D), 5005-2(A) and (B), 7003-1, 7004-2(A) AND 9016-1 AND

**NEW LOCAL BANKRUPTCY RULES
2016-2, 2090-1(N), 3004-1, 7055-1 and 9036-1**

Comments are invited to amendments to Rules 1006-1(C), 1007-1(J), 1017-3, 2003-1(B), 2016-1(C), 3011-1(B), 4001(a)-1(F) and (H), 4002-1(A) and (B), 4008-2(B), 5005-1(C) and (D), 5005-2(A) and (B), 7003-1, 7004-2(A) AND 9016-1 and new Rules 2016-2, 2090-1(N), 3004-1, 7055-1 and 9036-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia. The Local Bankruptcy Rules, as amended, take effect December 1, 2015.

The above cited revision 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, at www.vaeb.uscourts.gov, under Virginia Eastern News.

Comments may be submitted, by mail, to:

Local Rules Changes
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

Comments will be received by mail or at the Court's web site until 5:00 P.M., local time, Friday, November 6, 2015.

William C. Redden Date: October 7, 2015
Clerk of Court

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA

AMENDED LOCAL BANKRUPTCY RULES:
1006-1(C), 1007-1(J), 1017-3, 2003-1(B), 2016-1(C), 3011-1(B),
4001(a)-1(F) and (H), 4002-1(A) and (B), 4008-2(B), 5005-1(C)
and (D), 5005-2(A) and (B), 7003-1, 7004-2(A) and 9016-1.

NEW LOCAL BANKRUPTCY RULES:
2016-2, 2090-1(N), 3004-1, 7055-1 and 9036-1.



Effective December 1, 2015
(Version 10/7/15)

**RULE 1006-1 FEES: INSTALLMENT PAYMENTS, NONPAYMENT, WAIVER,
REFUNDS ~~[NEW]~~**

(C)(1) ***Nonpayment***: If a petition, complaint or other document is not accompanied by the proper filing fee or, if applicable, an application as set forth in paragraph (A) or (B) of this Local Bankruptcy Rule, the Clerk shall give notice to cure the filing fee deficiency. The Clerk may provide such 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 3 days after the notice is mailed. Unless the fee is paid or the party requests a hearing on the matter by the close of business on the next day after the notice to cure is given, the Clerk shall dismiss the petition or complaint or strike the pleading or other document without further notice. The Clerk shall reject any partial payment of any fee.

(2) Title 28 United States Code § 1930 and FRBP 1006 require fees to be paid at the time of filing. Except as provided for in paragraphs (A) and (B) of this Local Bankruptcy Rule, if a registered ECF User chooses to accumulate filing fees throughout a given calendar day, all of these fees must be paid by the end of the calendar day (i.e., 11:59:59 p.m. Eastern Time) in which the filings occur. A registered ECF User will be locked out of the Case Management/Electronic Case Files (CM/ECF) System and prevented from filing additional documents if filing fees are not paid by the end of the calendar day. The registered ECF User will receive a daily e-mail reminder until all outstanding fees are paid in full. Once locked out of the CM/ECF System, the registered ECF User will have limited access only for the purpose of making payments. Full access rights will be restored in the CM/ECF System after all outstanding fees have been paid in full. This paragraph supersedes the notice and dismissal provisions set forth in paragraph (C)(1) of this Local Bankruptcy Rule for electronically filed documents.

Comments

1006-1(C) Paragraph (C) is reorganized with the original paragraph (C) becoming paragraph (C)(1) and with a new paragraph (C)(2) added. The latter paragraph addresses the need for a registered ECF User to pay any outstanding filing fees at the end of each calendar day or be locked out from that User's account pending payment of all such owed fees. [Changes effective 12/1/15.]

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(b), 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), unless the Court has been notified by an approved provider of a course concerning personal financial management that the chapter 13 debtor(s) has completed the course pursuant to FRBP

1007(b)(7), shall file the statement of completion of such 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) This change clarifies that that an approved provider of a course concerning personal financial management may notify the Court that the chapter 13 debtor(s) has completed the requisite course as provided for in FRBP 1007(b)(7). [Change effective 12/1/15.]

RULE 1017-3 SUSPENSION OF AUTOMATIC DISMISSAL

~~**Rule Show Cause Hearing in Lieu of Dismissal in Certain Cases:**~~ Notwithstanding the provisions of LBR 1006-1, 1007-1(A), LBR 1007-3(A)(C), 2003-1(B), 3015-1(G), 3015-2(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~~ notice to show cause to the debtor and debtor's attorney, ~~and set the matter for a hearing.~~

Comments

1017-3 (1) A technical change is made to the reference to LBR 1007-3— from paragraph (C) to paragraph (A), therein. (2) As set forth in the first sentence, the phrase, “or if the debtor was a debtor in another case pending at any time within 12 months preceding the filing of the present case” is repealed. This change means that the rule only would apply to a situation in which the debtor's case previously had converted from one chapter of title 11 to another chapter of title 11. (3) A stylistic change is made whereby the term “rule” is deleted where it appears in the text. [Changes effective 12/1/15.]

RULE 2003-1 MEETING OF CREDITORS & EQUITY SECURITY HOLDERS

(B) *Dismissal for Failure to Appear*

.....

(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 and that it appears that there may be assets available for distribution to creditors, the Clerk shall issue a ~~rule~~ notice to show cause to the debtor ~~or~~ and debtor's attorney, ~~counsel, as the case may be, and set the rule for a hearing.~~

Comments

2003-1(J) A stylistic change is made whereby the term “rule” is deleted

where it appears in the text. The debtor and debtor’s attorney are to receive the referenced notice. [Changes effective 12/1/15.]

RULE 2016-1 COMPENSATION OF PROFESSIONALS

(C) For Debtor’s Attorney in Chapter 13 Case

(1) Generally

(a) The Court may award fees and expenses to the attorney for the debtor(s) in a chapter 13 case, without a hearing, at the Court’s ~~direction~~ discretion, in an amount not to exceed the fee, as specified in the “Adjustment of Dollar Amounts” statement published and updated periodically by the Clerk, as approved by the Court, \$5,000, as set forth provided for in subparagraph (C)(3)(a) of this Local Bankruptcy Rule, and subject to periodic adjustment, as provided for in subparagraph (C)(3)(e) of this Local Bankruptcy Rule.

....

(3) Fees Requested Not in Excess of \$5,000 [For all Cases and Proceeding (Absent Specified Exceptions) Filed on or After August 1, 2014] Amount of “No-Look” Fee Specified under Subparagraphs (C)(1)(a) and (C)(3)(a)

(a) If the initial fee charged to a debtor(s) for services in a Chapter 13 case, filed on or after August 1, 2014, does not exceed ~~\$5,000~~ the fee, as specified in the “Adjustment of Dollar Amounts” statement published and updated periodically by the Clerk, as approved by the Court, (other than excluding the initial filing fee), a formal application for approval and payment of the unpaid amount through the chapter 13 plan will not be required if the total fee and the unpaid portion clearly is set forth in the chapter 13 plan, and the fee is consistent with the disclosure of compensation statement filed under Federal Rule of Bankruptcy Procedure 2016 at the commencement of the case. An election under this subparagraph must be made at the commencement of the case; otherwise, it shall be deemed waived and compensation and reimbursement of expenses shall be requested in the manner set forth in subparagraph (C)(3)(d)(i) and (ii) of this Local Bankruptcy Rule.

Comments

2016-1(C) Subparagraphs (C)(1)(a) and (C)(3)(e) are amended to provide a means by which adjustments to dollar amounts provided for in this rule can be made available without the necessity of amending discrete rule provisions. For this purpose, the Clerk has been directed by the Court to publish an “Adjustment of Dollar Amounts” statement, and update that statement periodically, as directed by the Court. To do so, the Clerk has created an “Adjustment of Dollar Amounts” hyperlink at the Court’s Internet web site home

page, www.vaeb.uscourts.gov, at the “Court Resources” button on that page. A stylistic change also is made to subparagraph (C)(1)(a).
[Changes effective 12/1/15.]

**RULE 2016-2 ADMINISTRATIVE CLAIMS OF ENTITIES OTHER THAN
PROFESSIONALS [NEW]**

Except for fees and expenses subject to 11 U.S.C. §330, a chapter 7 trustee shall have the authority, prior to approval of the trustee’s final report, without further order of the Court, to pay: (1) reasonable and necessary administrative expenses in an aggregate amount not exceeding the amount specified in the “Adjustment of Dollar Amounts” statement published and updated periodically by the Clerk, as approved by the Court, per case; and (2) administrative taxes. The dollar limit specified in the “Adjustment of Dollar Amounts” statement will be adjusted in the same manner as the adjustments provided for by 11 U.S.C. §104(a).

Comments

2016-2 This rule is new. The adjustments under 11 U.S.C. §104(a) are made every three years, the first such adjustments having occurred on April 1, 1998, and are published in the Federal Register. The dollar limit specified in the “Adjustment of Dollar Amounts” statement is the same as the federal exemption for motor vehicles provided in 11 U.S.C. § 522(d)(2) (currently \$3,675), and therefore the periodic adjustment will be easily ascertainable by reference to that section. Use of this statement provides a means by which the information can be made available without the necessity of amending discrete rule provisions. For this purpose, the Clerk has been directed by the Court to publish an “Adjustment of Dollar Amounts” statement, and update that statement periodically, as directed by the Court. To do so, the Clerk has created an “Adjustment of Dollar Amounts” hyperlink at the Court’s Internet web site home page, www.vaeb.uscourts.gov, at the “Court Resources” button on that page. [New Rule effective 12/1/15.]

**RULE 2090-1 – RIGHT TO PRACTICE BEFORE THE COURT;
PRO SE PARTIES**

....

(N) Ghostwriting:

(1) Any attorney who prepares any document that is to be filed in this Court by a person who is known by the attorney, or who is reasonably expected by the attorney, to be proceeding *pro se*, shall be considered to have entered an appearance in the proceeding in

which such document is filed and shall be subject to all rules that govern attorneys who have formally appeared in the proceeding.

(2) All litigants who are proceeding *pro se* shall certify in writing and under penalty of perjury that a document(s) filed with the Court has not been prepared by, or with the aid of, an attorney or shall identify any attorney who has prepared, or assisted in preparing, the document.

Each document filed with the court by a *pro se* litigant shall bear the following certification:

CERTIFICATION

I declare under penalty of perjury that (Check one box):

No attorney has prepared, or assisted in the preparation of this document.

or The following attorney prepared or assisted in the preparation of this document.

(Name of Attorney)

(Address of Attorney)

(Telephone Number of Attorney)

Name of *Pro Se* Party (Print or Type)

Signature of *Pro Se* Party

Executed on: _____ (Date)

Comments

2090-1(N) Paragraph (N) is new. This provision conforms to EDVA District Local Civil Rule 83.1(M) and bars a *pro se* litigant from having an attorney assist in the preparation of a filing with the Court unless that assistance is disclosed in writing. [New paragraph Effective 12/1/15.]

RULE 3004-1 FILING OF CLAIMS BY DEBTOR OR TRUSTEE [NEW]

(A) *Notice of Claim Filed by Debtor or Trustee*: A debtor's attorney or a trustee electronically filing a proof of claim on behalf of a creditor under FRBP 3004 shall be responsible for giving notice to the creditor, debtor and trustee as required by that rule.

(B) *Proof of Service*: The filed proof of claim shall be accompanied by a certification that the proof of claim has been served upon the creditor, and, as applicable, to the debtor and trustee.

Comments

3004-1(A)-(B) This rule is new and provides that a debtor's attorney or trustee filing a proof of claim on a creditor's behalf give notice of such filing to the indicated persons, and file a certification to that effect. [New Rule effective 12/1/15.]

RULE 3011-1 UNCLAIMED FUNDS

.....

(B) *Disposition of Unclaimed Funds*

.....

(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 the claimant and in care of the attorney and will be mailed to the attorney.

Comments

3011-1(B) Paragraph (B)(4) is amended to provide that when a claimant is represented by an attorney, the payment will be issued in the claimant's name, in care of the attorney, and will be mailed to the attorney. [Change effective 12/1/15.]

RULE 4001(a)-1 RELIEF FROM AUTOMATIC STAY

(F) *Service of Motion*: The movant shall serve a copy of the motion upon the debtor and, if applicable, upon:

(1) the debtor's attorney;

(2) the trustee;

(3) each official committee appointed in the case or its authorized representative;

(4) if a chapter 11 case, any additional creditors if required by FRBP 4001(a)(1); and

(5) any other party in interest as directed by the Court.

~~(1) Of Motion: The movant shall serve a copy of the motion upon the debtor and, if applicable, upon:~~

~~(a) the debtor's attorney;~~

~~(b) the trustee;~~

~~(c) each official committee appointed in the case or in its authorized representative;~~

~~(d) if a chapter 11 case, any additional creditors if required by FRBP 4001(a)(1), and~~

~~(e) any other party in interest as directed by the Court.~~

~~(2) **Of Notice of Hearing:** The Clerk shall, within 7 days after the date of the motion was filed, assign a hearing date and serve notice of such hearing upon the parties indicated in the proof of service filed pursuant to paragraph (E)(3) of the Local bankruptcy Rule. For Alexandria and Richmond division cases only, the movant must select a preliminary hearing date and time from the schedule provided by the Clerk.~~

....

(H) *Relief from Codebtor Stay in Chapter 13 Cases*

....

~~(2) **Service and Time for Response:** Service shall be as set forth in paragraph (F)(1) of this Local Bankruptcy Rule. The time for response is ~~24~~ 20 days from the date of service of the motion. The notice served upon the codebtor in any relief action shall include notice of the response period. In addition, 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 [see 11 U.S.C. §1301(d)]."~~

Comments

4001(a)-1(F) Paragraph (F) of the rule is reorganized as paragraph (F)(2) no longer is required. [Change effective 12/1/15.]

4001(a)-1(H) Paragraph (H)(2) of the rule is amended to conform to 11 U.S.C. § 1301(d). [Change effective 12/1/15.]

RULE 4002-1 DUTIES OF THE DEBTOR [New]

(A) Tax Information Under 11 U.S.C. §521:

(1) Failure to Provide Pre-petition Tax Information Dismissal of Debtor's Case:

(a) Upon certification by the trustee that Pursuant to 11 U.S.C. §521(C)(2)(B), if the debtor failed to comply with either §521(e)(2)(A)(i) or (ii), unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor, the Court Clerk shall issue a notice to show cause to the debtor and debtor's attorney why dismiss the debtor's case should not be dismissed, upon either:

~~(a) certification by the trustee wherein the Clerk shall issue a rule to show cause order to the debtor and the debtor's attorney, if any, and set the matter show cause order for a hearing; or. . . .~~

(b) If the debtor failed to comply with either 11 U.S.C. §521(e)(2)(A)(i) or (ii), upon motion by a creditor and after service of the motion by the creditor on the debtor and debtor's attorney, if any, and a hearing, the Court will determine whether or not to dismiss the case. Any motion to dismiss filed by a creditor must state with particularity that the creditor timely requested a copy of the tax return under FRBP 4002(b)(4).

. . . .

(B) ~~Dismissal for Failure to Provide Payment Advices or Other Evidence of Payment:~~ Upon certification by the trustee that the debtor failed to provide the trustee with all payment advices or other evidence of payment, as required by LBR 1007-1~~(F)(H)~~, the Clerk shall issue a ~~rule to~~ notice to show cause to the debtor and the debtor's attorney; if any, why the case should not be dismissed. ~~and set the matter for a hearing.~~

Comments

4002-1(A)-(B) Paragraph (A)(1) is modified to accommodate a stylistic change whereby the term "rule" is deleted where it appears in the text. Other conforming changes are made to the text. Paragraph (B) is modified for the same reason. A technical change is made to the reference to LBR 1007-1—from paragraph (I) to paragraph (H), therein. [Changes effective 12/1/15.]

**RULE 4008-2 CHAPTER 13 DISCHARGE AND CERTIFICATION OF COMPLIANCE;
DUTY OF DEBTOR TO COOPERATE WITH CHAPTER 13 TRUSTEE**

. . . .

(B) *Debtor's Duty to Cooperate with Chapter 13 Trustee Upon Completion of Plan Payments:* Upon completion of chapter 13 plan payments the debtor shall comply within 14 days with any requirement of the chapter 13 trustee for information needed to provide the notices required by 11 U.S.C. §1302(d). Further, if the trustee determines that the debtor has failed to timely provide

the trustee with such information, the trustee shall within 30 days of completion of the chapter 13 plan payments, file a certification of non-compliance wherein the Clerk shall issue a notice to show cause order to the debtor and the debtor's attorney, ~~if any~~, why sanctions, including dismissal of the case without granting a discharge, should not be imposed. ~~The Clerk shall set the show cause order for a hearing.~~

Comments

4008-2 Paragraph (C) is modified to accommodate a stylistic change whereby the term "order" is deleted where it appears in the text. Other conforming changes are made to the text. [Change effective 12/1/15.]

RULE 5005-1 FILING OF PETITIONS, PLEADINGS AND OTHER PAPERS

....

(C) *Requirements of Form:*

....

(6) *Filing of Faxed Petitions, Pleadings and other Documents:* Petitions, pleadings and other papers ~~which that~~ have been transmitted by facsimile equipment may be filed with the Court except for the List of Creditors, which must be in the format specified by the Clerk as required under LBR 1007-1~~(F)~~(H). Once filed, the faxed document constitutes the original and no other copy bearing an original signature should later be filed. All applicable filing requirements must be met, including the payment of any filing fee due.

(D) *Additional Requirements:*

....

(2) *Complaints:* Each complaint commencing an adversary proceeding must be accompanied by:

(a) the proper filing fee and

(b) a properly completed Adversary Proceeding Cover Sheet as provided in LBR 7003-1, if counsel is permitted by the Court to file a complaint other than through the Case Management/Electronic Case Files System, or if the complaint is filed by a *pro se* litigant.

Comments

5005-1(C) Technical and stylistic changes are made to paragraph (C)(6) of the rule. [Changes effective 12/1/15.]

5005-1(D) This rule provision is amended to conform to the amendment made to LBR 7003-1. [Change effective 12/1/15.]

RULE 5005-2 FILING OF PETITIONS, PLEADINGS AND OTHER PAPERS BY ELECTRONIC MEANS

(A) **Electronic Case Files Policy**: All petitions, motions, memoranda of law, or other pleadings, documents and papers filed with the Court shall be filed through the Case Management/Electronic Case Files (CM/ECF) System (~~CM/ECF~~), except as otherwise provided for in the ~~Court's~~ *Court's Electronic Case Files Policy* (CM/ECF Policy), which shall be promulgated and revised as specified by the Clerk. The CM/ECF Policy governs if there is a conflict between that Policy and these Local Bankruptcy Rules as to the technicalities of electronic case filing.

(B) **Technical Failure**: A registered ECF User whose filing is made untimely as the result of a CM/ECF System technical failure, may seek appropriate relief from the Court as provided for in the CM/ECF Policy.

Comments

5005-2(A)-(B) This rule is reorganized into two paragraphs, (A) and (B). Stylistic changes are made to paragraph (A). The text of paragraph (B) is new. That paragraph makes provision for the possibility that due to a CM/ECF System technical failure, access to that System by a registered ECF User may not be available for filing purposes. The Court's CM/ECF Policy provides the procedure that a registered ECF User must follow should such a situation occur. [Changes and new provision effective 12/1/15.]

RULE 7003-1 ADVERSARY PROCEEDING COVER SHEET

At the time of filing an adversary proceeding, counsel; permitted by the Court to file a complaint other than through the Case Management/Electronic Case Files System or a pro se litigant, shall file with the complaint a properly completed adversary proceeding cover sheet in substantial compliance with the applicable form promulgated by the Administrative Office of the United States Courts. The Clerk is directed to provide such forms to the public upon request.

Comments

7003-1 This rule is amended to limit the filing of an adversary proceeding cover sheet to those counsel-filed complaints where the Court permits counsel to so file in a format other than through the Case Management/Electronic Case Files System, as governed by the Clerk's Case Management/Electronic Case Files Policy Statement, CM/ECF Policy 1(C) **Waiver**. Pro se litigants will continue to file the requisite adversary proceeding cover sheet in paper format. [Change effective 12/1/15.]

RULE 7004-2 SUMMONS

(A) **Issuance:** The Clerk shall issue to the plaintiff for service a summons for each party as identified by the plaintiff, ~~as listed on the adversary proceeding cover sheet.~~

Comments

7004-2(A) This rule change deletes the requirement that the adversary proceeding cover sheet be used for the purpose of listing the parties to receive a summons. [Change effective 12/1/15].

RULE 7055-1 ENTRY OF DEFAULT AND ENTRY OF JUDGMENT BY DEFAULT [NEW]

(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. 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.

(B) Motion for Entry of Default Judgment

(1) Entry of a Default Judgment by the Clerk

(a) A default judgment may be entered by the Clerk only if the movant's claim is for a sum certain or a sum that can be made certain by computation, unless the presiding judge determines that a report and recommendation to the District Court is more appropriate. A claim that includes attorney fees – whether set out in the operative document or statute as a fixed amount, a fixed percentage, reasonable or otherwise – is not a claim for a sum certain or a sum that can be made certain by computation. A default judgment on such a claim must be entered by the Court under LBR 7055-1(B)(2).

(b) After a default has been entered, as provided for in paragraph (A), the party seeking entry of a default judgment by the Clerk shall file a Motion for Entry of Default Judgment by the Clerk. The motion shall be accompanied by an affidavit, a declaration signed under penalty of perjury or certification by counsel setting forth the facts related to the party or parties in default. These facts must include:

(i) 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.)

(ii) 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.

(iii) The date the Clerk entered the default on the record.

(iv) The amount of the judgment requested together with the grounds for that amount with particularity, including the exact computation made by the movant of the principal amount, interest and costs.

(c) The party seeking entry of a default judgment by the Clerk shall file with the Court and then serve a copy of the motion and the supporting affidavit, declaration or certification on the party in default or its representative and a notice that the Clerk may enter the requested judgment if no objection is filed within 14 days after service of the motion (plus any additional time required by FRBP 9006(a) and (f)). If a timely objection is filed, the party seeking entry of the default judgment will promptly set the matter for a hearing in accordance with the practices of the appropriate division. If no timely objection is filed, in consultation with the Court, the Clerk shall review 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 judgment as requested and computed by the movant. Pursuant to FRBP 55(a), the party seeking default judgment 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 judgment 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.

(2) Entry of a Default Judgment by the Court

(a) In all other cases, a default judgment may only be entered by the Court, unless the presiding judge determines that a report and recommendation to the District Court is more appropriate.

(b) A party seeking entry of a default judgment by the Court shall file a motion for Entry of Default Judgment by the Court and shall set the matter for a hearing in accordance with the practices of the appropriate division. A party seeking entry of a default judgment shall also submit a proposed order as provided for by an electronic means established by the Court. The motion shall state whether the Court should conduct a hearing to determine the amount of damages, establish the truth of any allegation by evidence or investigate in any other manner and be accompanied by a verified affidavit or a declaration signed under penalty of perjury or certification by counsel

setting forth the facts related to the party or parties in default. These facts must include:

(i) 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.)

(ii) 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.

(iii) The date of the issuance of the summons and the date and manner of service of the summons and complaint or motion.

(iv) If the Clerk noted default by entry on the record, the date that it was noted.

(v) If judgment is for a sum certain or a sum that can be made certain by computation, the grounds for that amount with particularity, including the exact computation of the principal amount, interest and costs.

(c) The party seeking entry of a default judgment by the Court shall file with the Court and serve a copy of the motion and the supporting affidavit, declaration, or certification on the party in default or its representative and a notice of a hearing on the motion which will be on at least 14 days' notice except as otherwise provided for in FRCP 55(b)(2). Consistent with FRCP 9013 and LBR 9013-1(A), service by the movant of the motion on the party against whom default judgment is sought must be effected in the manner set forth in FRBP 7004.

Comments

7055-1(A)-(B) This rule is new and provides a procedure for: (1) the Clerk of Court to enter a default in either an adversary proceeding or a contested matter; and (2) if specified conditions are met, entry of a default judgment by the Clerk of Court or, in all other cases, entry of default judgment by the Court, unless, as set forth in paragraphs (B)(1)(a) and (B)(2)(a), "the presiding

judge determines that a report and recommendation to the District Court is more appropriate.” [New Rule effective 12/1/15.]

RULE 9016-1 SUBPOENAS

(A) ***Request for Subpoena:*** Attorneys admitted to practice in this Court may issue and sign a subpoena on behalf of this Court. Otherwise, Requests for subpoenas from the Clerk shall be in writing and signed by counsel, 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 admitted to practice in this Court and noted who are counsel 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.~~

Requests for subpoenas from the Clerk by individuals appearing pro se may apply for subpoenas in their own behalf shall be in writing.

Each request for subpoena shall be accompanied by a subpoena which has been completed except for issuance by the Clerk.

....

(E) ***Subpoenas Duces Tecum:*** Unless otherwise provided in the subpoena, w~~Whenever~~ a subpoena *duces tecum* has been directed to any person to produce any books, papers, documents or tangible things to any court and to attend and give testimony at the time scheduled for the trial, taking of depositions or other hearing, the person requested therein to produce, or whenever all parties agree, an alternate, shall produce such items to the Clerk on or before 9:00 a.m. on the day designated, unless the Court orders otherwise, to enable counsel to review the same prior to commencement of the trial or the hearing. Provided, however, if a party has good reason not to produce and surrender custody of the same to the Clerk, that party shall so advise the Court in writing promptly upon receipt of the subpoena to enable the Court to rule on the objection. All ~~C~~counsel are required ~~to~~ promptly to inspect said items so ~~as to enable~~ the trial may ~~to~~ proceed promptly ~~promptly~~ timely.

The provisions hereof are not intended in any way to change or modify the provisions of FRBP 7026 or FRBP 9016 or any other applicable Federal Rule of Bankruptcy Procedure or Federal Rule of Civil Procedure, but to supplement the provisions of FRBP 9016.

....

(G) **Deposition Subpoenas:** Proof of service of a notice to take depositions as provided in FRCP 30(a) and FRCP 31(a) constitutes sufficient authorization for the issuance of a subpoena by the Clerk ~~for the district in which the deposition is to be taken~~ for the attendance of persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by FRCP 26(b), but in that event the subpoena will be subject to the provisions FRCP 30(b) and FRCP 45(b). No subpoena for the taking of depositions shall be issued by the Clerk unless there be exhibited to the Clerk a copy of the notice to take deposition together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. FRCP 45(d)(1).

....

(I) **Subpoenas in Blank:** ~~Whenever there is a question as to whether or not a subpoena in blank should be issued by the Clerk, the request shall be referred to a Judge of this Court for a final determination. Before the Clerk may issue a subpoena in blank, the Clerk shall determine the actual pendency of the action and the date and time set for hearing or trial. Except for good cause shown, a subpoena returnable in one division will not be issued out of another division. Blank subpoenas shall recite include the title case name and number of the case and shall be complete in every detail except the name and address of the witness. Returns of service shall be made promptly and filed with the Clerk. All service shall be made strictly in accordance with these Local Bankruptcy Rules.~~

Comments

9016-1(A) Paragraph (A) is amended to comport with the amendment made to FRCP 45(a)(2), which provides that the subpoena must issue from the Court where the action is pending, and FRCP 45(a)(3), which provides that an attorney can issue and sign a subpoena if the attorney is admitted to practice in the issuing Court. Stylistic changes are made to this paragraph, as well. [Changes effective 12/1/15.]

9016-1(B) Paragraph (E) is amended to clarify that a party can request the production of documents at a place other than the courthouse and at a time other than 9:00 a.m. on the morning of the trial or hearing. Stylistic changes are made to this paragraph, as well. [Change effective 12/1/15.]

9016-1(G) Paragraph (G) is amended to conform this paragraph to the amendment made to FRCP 45(a)(2), which provides that the subpoena must issue from the Court where the action is pending. [Change effective 12/1/15.]

9016-1(I) Paragraph (I) is amended to conform this paragraph to the amendment made to FRCP 45(a)(3), which provides that the Clerk must

issue a subpoena signed but otherwise in blank to a party who requests it.
Stylistic changes are made to this paragraph, as well. [Change effective
12/1/15.]

RULE 9036-1 – COURT NOTICE TO DEBTORS BY ELECTRONIC TRANSMISSION

Debtors are eligible to participate in Debtor Electronic Bankruptcy Noticing in accordance with procedures promulgated and revised as specified by the Clerk under LBR 5005-2. As permitted, this includes use by non-registered CM/ECF users of any electronic bankruptcy noticing program approved by the Court for such users.

Comments

9036-1 This rule is new and includes a provision allowing, as permitted under procedures promulgated and revised as specified by the Clerk under LBR 5005-2, the service of Court-generated notices and orders upon debtors who have elected to participate in any electronic bankruptcy noticing program approved by the Court for such purpose.
[New rule effective 12/1/15.]