

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

**PUBLIC NOTICE**

**Revision to Local Bankruptcy Rules  
Effective October 17, 2005**

The following is a summary of a Court-approved revision to the Local Bankruptcy Rules (LBRs), which shall take effect on October 17, 2005, and shall govern procedures in all cases and proceedings pending on that date or filed after that date.

1. *LBR 1006-2 Fees: Electronic Refunds.* This new rule adopts a procedure by which filing fees paid over the Internet with a credit card may be administered when errors in electronic payments are made. The rule is consistent with guidance approved, in principle, by the Judicial Conference of the United States. The rule establishes an additional Judicial Conference-authorized narrow exception to the longstanding Judicial Conference policy prohibiting the refund of fees.
2. *LBR 3015-2 Chapter 13 Plan Requirements.* This rule has been reorganized and substantially revised. The rule incorporates a new revised form of plan that has been adopted for use by the bankruptcy judges of the Eastern and Western Districts of Virginia. The form of plan follows the Local Bankruptcy Rules as Exhibit 1. A form of special notice to secured creditors also is incorporated into the rule and follows the Local Bankruptcy Rules as Exhibit 2.
3. *LBR 5005-1 Filing of Petitions, Pleadings and Other Papers:* The change to this rule is stylistic.
4. *LBR 6004-3 Sale or Refinance of Property by Chapter 13 Debtor after Confirmation:* This rule is new and provides a procedure for a debtor to seek approval for the sale or refinance of real property following confirmation of the debtor's plan.
5. *LBR 7013-1 Counterclaim:* This rule is repealed upon a finding that it is no longer needed.
6. *LBR 9010-1 Representation and Appearances; Powers of Attorney:* This rule adds several new items to the list of items that may be filed with the court without legal representation.
7. *LBR 9014-1 Whether Hearing is Evidentiary or Preliminary:* With the amendment to FRBP 9014(c) that became effective December 1, 2004, paragraph (A) is repealed as no longer being needed.
8. *Exhibits 1 and 2 to LBRs:* See the reference to these two new exhibits, which replace the current exhibits, at Item 2 above.

William C. Redden  
Clerk of Court

Date: September 28, 2005

Attachments

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA

In re:

Revision of Local Rules )  
 )  
 ) Standing Order No. 05-7  
 )  
 )

ORDER ADOPTING REVISION OF LOCAL RULES

After giving appropriate public notice and an opportunity for comment, pursuant to delegation of authority from the United States District Court, the accompanying Local Rules are hereby adopted.

Local Bankruptcy Rules 1006-2 (new), 3015-2, 5005-1, 6004-3, 7013-1 (repealed), 9010-1, and 9014-1 shall take effect on the 17<sup>th</sup> day of October 2005, and shall govern procedures in all cases and proceedings pending on that date or filed after that date. The prior Local Rules are rescinded effective October 17, 2005.

Dated: September 28, 2005

/s/ Douglas O. Tice, Jr  
DOUGLAS O. TICE, JR.  
Chief United States Bankruptcy Judge

/s/ David H. Adams  
DAVID H. ADAMS  
United States Bankruptcy Judge

/s/ Stephen S. Mitchell  
STEPHEN S. MITCHELL  
United States Bankruptcy Judge

/s/ Stephen C. St. John  
STEPHEN C. ST. JOHN  
United States Bankruptcy Judge

/s/ Robert G. Mayer  
ROBERT G. MAYER  
United States Bankruptcy Judge

## **RULE 1006-2 FEES: ELECTRONIC REFUNDS**

### **(A) Request for Refund**

(1) An attorney or trustee may request a refund of a filing fee paid electronically in a case or proceeding in which payment was made by credit card when:

(a) a fee was paid for filing a duplicate document, bankruptcy petition or adversary proceeding,

(b) a fee was paid for filing a document in the wrong case or proceeding, or

(c) the movant is entitled to an exemption from the filing fee paid.

(2) A trustee or debtor in possession may request a refund of a filing fee paid electronically when payment was made by credit card and the trustee or debtor in possession is eligible for deferral of the filing fee in a case in which no funds from the estate exist for payment of the filing fee.

**(B) Motion Required:** The request shall be made promptly after the payment error is discovered by a motion for a refund:

(1) and to dismiss the case or proceeding when the fee charged resulted from filing a duplicate petition or adversary proceeding,

(2) and to strike the pleading when the fee charged resulted from filing a duplicate pleading or from filing a pleading in the wrong case or proceeding, or

(3) when the trustee or debtor in possession is eligible for deferral of the filing fee in a case or proceeding in which no funds from the estate exist for payment of the filing fee.

**(C) Motion Contents:** The motion must contain a complete explanation as to why the payment should be refunded. The motion need not contain a supporting memorandum or be noticed for a hearing.

**(D) Clerk-Authorized Actions:** Upon verification of the grounds set forth in the motion, the Clerk is authorized to dismiss the filing or strike the pleading as the case may be, and to effect a refund only if the refund may be processed as a credit to the attorney's or trustee's credit card.

**(E) Clerk's Referral to the Court:** The Clerk may refer a motion set forth in paragraph (B) of this Local Bankruptcy Rule to the attention of the judge assigned to the case or proceeding for such further determination and action as the judge may find appropriate.

**(F) Request for Clearance:** A movant may request clearance of the "filing fee due" status in a case or proceeding in which the fee has not yet been paid by contacting a deputy clerk in the appropriate division of the Clerk's Office.

### **Comments**

1006-2 This new rule adopts a procedure by which filing fees paid over the Internet with a credit card may be administered when errors in electronic payments are made. The rule is consistent with guidance approved, in principle, by the Judicial Conference of the United States. The rule establishes an additional Judicial Conference-authorized narrow exception to the longstanding Judicial Conference policy prohibiting the refund of fees. [New Rule effective 10/17/05.]

## **RULE 3015-2 CHAPTER 13 PLAN REQUIREMENTS**

(A) **Form of Plan; Inclusion of Related Motions:** The only acceptable form for a Chapter 13 plan shall be that form approved by the Court (Exhibit 1 to these Local Bankruptcy Rules) and available from the Clerk's Office upon request or from the court's Internet web site, [www.vaeb.uscourts.gov](http://www.vaeb.uscourts.gov). Counsel are encouraged, however, to delete the text of inapplicable sections from the plan provided that the section numbering and section headings are retained, followed by an appropriate notation such as "None" or "Not Applicable". If applicable, and without prejudice to a debtor's right to file a stand-alone motion seeking the same relief, the plan shall include the following related motions:

(1) **Motion for Determination of Value Pursuant to 11 U.S.C. § 506(a).**

(2) **Motion for Lien Avoidance Pursuant to 11 U.S.C. § 522(f):** (Lien avoidance under any other provision of the Bankruptcy Code must be by separate adversary proceeding and requires service of a summons and complaint.)

(3) **Motion for Assumption or Rejection of Executory Contracts Pursuant to 11 U.S.C. § 365.**

(B) **Special Notice to Secured Creditors Whose Collateral is to be Valued or Lien Avoided:** Unless a stand-alone motion and appropriate notice is served on the affected creditor at the same time as the plan is filed with the clerk and transmitted to creditors, the debtor shall serve on each creditor who is the subject of an included motion for valuation under 11 U.S.C. §506(a) or an included motion for lien avoidance under 11 U.S.C. §522(f) a copy of the plan to which is attached a notice in the form approved by the Court (Exhibit 2 to these Local Bankruptcy Rules). Service of the plan and special notice must be made in the manner provided for in Rule 7004, Fed.R.Bankr.P.

(C) **Filing of Original Chapter 13 Plan and Related Motions**

(1) **Requirement:** The Chapter 13 Plan and Related Motions and any special notice to secured creditors required by this rule shall be filed with the clerk not later than fifteen (15) days after the commencement of the case if the case was originally filed under chapter 13, or 15 days after the order converting the case to chapter 13 from some other chapter.

(2) **Proof of Service to include names and addresses of all parties served:** The Chapter 13 Plan and Related Motions must contain a proof of service setting forth the

date and manner of service and the names and addresses of all parties to whom the plan was mailed or transmitted.

**(3) Extension of Time to File Chapter 13 Plan and Related Motions**

(a) A motion to extend the time to file a Chapter 13 Plan and Related Motions may be granted by the clerk for an additional 10 days, if

(i) the motion for extension has been filed before the initial due date has expired; and

(ii) notice of the motion has been given by the debtor to the trustee and all creditors.

(b) Any motion that is filed after the due date or that seeks an extension of time beyond the dates specified in subparagraph (C)(3)(a) of this rule shall be noticed for a hearing before the judge assigned to the case.

**(D) Distribution of Chapter 13 Plan and Related Motions:** The debtor shall distribute a copy of the original Chapter 13 Plan and Related Motions to all creditors, the standing trustee, and other parties in interest at or prior to the time it is filed with the court. Upon receipt of the confirmation date, time and location, the debtor shall serve on affected creditors the special notice required by paragraph (B) of this rule.

**(E) Objections to Confirmation of Original Chapter 13 Plan or to Related Motions**

(1) Deadline for Filing: Any objection to confirmation of the Chapter 13 Plan or to the granting of any included Motion for Determination of Value, Motion for Lien Avoidance, or the Motion to Assume or Reject Executory Contract or Unexpired Lease shall be filed not later than ten (10) days prior to the date set for the confirmation hearing. Any extension of the original objection period must be requested by motion.

(2) Service of Objection: The objecting party shall file an original objection with the Court and serve copies on the standing trustee, the debtor, and the debtor's attorney. The objection shall be accompanied by proof of service evidencing compliance with this requirement.

(3) Hearings on Objections: All timely filed objections shall be heard at the confirmation hearing as set forth in the notice of meeting of creditors.

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

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

(a) Time for Filing: Unless confirmation of a prior plan has been denied, a modified plan may be filed at any time prior to confirmation. If confirmation of a prior plan has been denied, a modified plan must be filed within the

period stated in paragraph (H)(3) of this rule unless the order denying confirmation states some other period.

**(b) Distribution of Modified Chapter 13 Plan and Related Motions:** The modified Chapter 13 Plan and Related Motions, and any special notice required by paragraph (B) of this rule, must be distributed and served in the same manner as the original plan. The special notice required by paragraph (B) of this rule need not be given, however, if an order has previously been entered granting the relief sought and the modified plan does not contain any provision inconsistent with the order previously entered.

**(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 30 ten (10) days prior to the date set for the confirmation hearing. 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.

**(d) Effect on Hearing Scheduled on Objection(s) to any Previously Filed Unconfirmed Plan**

(i) Once a modified plan and related motions has been filed by the debtor, all previously filed unconfirmed plans and related motions are deemed withdrawn.

(ii) Norfolk and Newport News Divisions. In the Norfolk and Newport News Divisions, the filing of a modified plan and related motions does not remove a previously-scheduled hearing on objection to confirmation from the court calendar. Removal of any such hearing must be requested by the objecting party and agreed to by the Court.

(iii) Richmond and Alexandria Divisions. In the Richmond and Alexandria Divisions, the filing of a modified plan and related motions will remove a previously-scheduled hearing on objection to confirmation from the court calendar without further order of the Court, but without prejudice to any party's right to object to the modified plan.

**(2) Procedure where plan has been confirmed.**

**(a) Where modification is requested by the trustee or a creditor:** If modification of a confirmed plan is sought by the trustee or by a creditor, the modification must be requested by motion. A hearing date shall be obtained from the clerk, and at least 20 days notice of the hearing shall be given to the debtor, debtor's counsel, the trustee (if the trustee is not the movant), and all creditors. The time for filing any response is governed by LBR 9013(H)(3).

(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. Any objection to the modified plan must be filed not later than ten (10) days prior to the date set for the confirmation hearing.

(G) **Confirmation of Plan and Granting of Related Motions Without a Hearing:** After the time for filing objections has passed and if no objection has been timely filed, the Court may enter an order confirming the plan and granting the relief sought in the related motions without holding a hearing, or the Court may direct that a hearing be held.

(H) ~~(C)~~(4) **Dismissal of Case for Failure to Timely File or Distribute Plan and Notice, Except as Provided in LBR 1017-3**

(1) ~~(a)~~ **Clerk to Issue:** Except as provided in LBR 1017-3, the Clerk shall issue an order of dismissal in any chapter 13 case not meeting the timeliness of filing requirements of ~~subdivisions A(2), A(3), or A(4)~~ paragraphs B, C, or D of this Local Bankruptcy Rule.

(2) ~~(b)~~ **Notice of Possible Dismissal.** The Clerk shall give notice of this Local Bankruptcy Rule to the debtor or debtor's counsel at the time the petition is filed. The Clerk shall also give notice of this Local Bankruptcy Rule in the notice of meeting of creditors.

(3) ~~(2)~~ **Dismissal of Case upon Denial of Confirmation.** Except as provided in LBR 1017-3, if the Court denies confirmation of the debtor's original or subsequently modified Chapter 13 Plan and Related Motions, unless the Court has entered an order previously confirming a plan, the Clerk is directed to issue an order dismissing the chapter 13 case unless, within twenty (20) days after denial of confirmation:

(a) the debtor files a new Modified Chapter 13 Plan and Related Motions;

(b) the debtor converts or moves to convert the case to another chapter of the Bankruptcy Code;

(c) the debtor files a motion for reconsideration or appeals the denial of confirmation; or

(d) the Court otherwise orders.

An order previously entered by the Court confirming a Chapter 13 Plan shall remain in full force and effect if a subsequently modified Chapter 13 Plan and Related Motions is denied confirmation by the Court.

### Comments

Rule 3015-2 Revised Chapter 13 Form Plan:

Since February 15, 1988, the Eastern District of Virginia has required that chapter 13 plans follow a prescribed format. See *In re Walat*, 87 B.R. 408 (Bankr.E.D. Va 1988) (*en banc*), *aff'd* 89 B.R. 11 (E.D. Va. 1988). Following the Fourth Circuit's decisions in *Piedmont Trust Bank v. Linkous* (*In re Linkous*), 990 F.2d 160 (4<sup>th</sup> Cir. 1993) and *Cen-Pen Corp. v. Hanson*, 58 F.3d 89 (4<sup>th</sup> Cir. 1995), the form plan was expanded to include "related" motions to value collateral and avoid liens, and a separate "Notice of Chapter 13 Plan and related Motions" was adopted for service on creditors in addition to the plan itself.

In 2003, the National Association of Chapter 13 Trustees recommended a model form of chapter 13 plan which had been drafted at an Advanced Practice Institute by a group of debtors' counsel, trustees, creditors' representatives, attorneys and others. After the chapter 13 trustees in the Western District of Virginia proposed a variant of this model plan for adoption in that district, a working group of one judge and one chapter 13 trustee from each district proposed further modifications that would allow the same form of plan to be used in each district. After a period of public comment and a trial use of the model plan at a Virginia CLE Advanced Consumer Bankruptcy Seminar, a redrafted proposal was prepared by the chapter 13 trustees of both districts. This proposal, with some minor changes agreed to by the judges of both districts at two joint meetings, resulted in the current plan.

Adoption of a uniform plan is expected to benefit state-wide and national creditors (who would have only one form of plan from Virginia to decipher) as well as attorneys who practice in both districts and would no longer have to separately configure their form preparation software for each district. Because it is shorter than the existing Eastern District of Virginia plan, it should also be significantly easier for *pro se* parties (many of whom struggle with the current form of plan) to fill out.

The revised plan, like the previous plan, incorporates "related" motions to value collateral and avoid liens. To satisfy the due-process concerns in *Linkous* and *Cen-Pen*, a separate "special" notice must be attached to the copy of the plan mailed to the creditors that are the subject of those motions. [Rule effective 10/17/05.]

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

(B) *Proponent to be Member of Bar:* Any attorney offering a petition, pleading or other paper other than a request for notices under FRBP 2002(g), for filing on behalf of a client must be a member in good standing of the Bbar of this Court

**Comments**

5005-1(B) A stylistic change has been made to conform this rule provision. [Change effective 10/17/05.]

**RULE 6004-3 SALE OR REFINANCE OF PROPERTY BY CHAPTER 13 DEBTOR AFTER CONFIRMATION**

(A) A debtor seeking approval for the sale or refinance of real property following confirmation of a plan that reverts such property in the debtor shall provide the chapter 13 trustee and all creditors and parties in interest at least 20 days notice of the motion seeking such approval unless the notice period has been shortened by the court for cause shown.

(B) In addition to setting forth the information required by Rule 2002(c)(1), Fed.R.Bankr.P. the notice shall state:

(1) the total proposed sale price or maximum amount to be secured by the refinancing, as the case may be, and, in the case of refinancing, the amount of existing secured debt to be paid thereby;

(2) the amount of the sale or loan proceeds to be applied to the debtor's obligations under the confirmed plan;

(3) whether such payment will result in full payment of all allowed claims; and

(4) if all allowed claims will not be paid in full, the amount of the sale or loan proceeds that will be paid to the debtor.

C. If no objection is filed within the objection period, the court, in its discretion, may enter an order endorsed by the chapter 13 trustee approving the sale or refinance without holding a hearing.

**Comments**

6004-3 [New Rule effective 10/17/05.]

**RULE 7013-1 COUNTERCLAIMS**

[Repealed]

~~A filing fee in the same amount as for a complaint is due upon the filing of a counterclaim. The filing fee may be waived by the Court upon the submission of a memorandum of points and authorities in support of non-payment of the filing fee.~~

#### Comments

~~7013-1 This rule is repealed upon a finding that it is no longer needed. [Repeal effective 10/17/05.]~~

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

***Requirement for Counsel:*** Except for filing a proof of claim, request for notices/service, notice of appearance, reaffirmation agreement, or notice of 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 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 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 ten days of the mailing or delivery of a notice of deficiency.

#### **Comments**

9010-1 [New rule effective 2/1/00.]

9010-1 This rule adds several new items to the list of items that may be filed with the court without legal representation. [Change effective 10/17/05.]

### **~~RULE 9014-1 DISCOVERY IN CONTESTED MATTERS, RELIEF FROM STAY MATTERS AND WHETHER HEARING IS EVIDENTIARY OR PRELIMINARY~~**

~~(A) ***Discovery in Contested Matters and Relief from Stay Matters:*** Unless otherwise ordered by this Court on its own motion or upon motion of a party, the following subdivisions of FRBP 7026 shall not apply in a contested matter or in a relief from stay matter: FRBP 7026(a)(1), 7026(a)(2), 7026(a)(3), 7026(d) and 7026(f).~~

~~(B) ***Whether Hearing is Evidentiary or Preliminary:*** Except as provided for in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, these Local Bankruptcy Rules, or as otherwise ordered by the Court on its own motion or on motion of a party, all parties shall be prepared to present evidence and testimony at any scheduled hearing where the hearing has been set on at least thirty days notice unless the parties agree or the Court orders that evidence and testimony will be presented at any scheduled hearing that is set on less than thirty days notice.~~

#### **Comments**

9014-1 With the amendment to FRBP 9014(c) that

became effective December 1, 2004, paragraph (A)  
is repealed as no longer being needed [Change effective  
10/17/05.

Ver. 09/19/05.