

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

PUBLIC NOTICE

**INVITATION FOR COMMENT ON AMENDMENTS TO
LOCAL BANKRUPTCY RULES
1006-1(C)(1), 9013-1(H)(3)(c) and (J), 9019-1**

AND

**NEW LOCAL BANKRUPTCY RULES
9006-1 and 9013-1(K)**

Comments are invited to amendments to Rules 1006-1(C)(1), 9013(H)(3)(c) and (J), and 9019-1 and new Rules 9006-1 and 9013-1(K) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia. The Local Bankruptcy Rules, as amended, take effect August 1, 2017.

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, July 7, 2017.

William C. Redden
Clerk of Court

Date: June 8, 2017

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA

**AMENDED LOCAL BANKRUPTCY RULES 1006-1(C)(1), 9013-
1(H)(3)(c) and (J), 9019-1;**
NEW LOCAL BANKRUPTCY RULES 9006-1 and 9013-1(K)



Effective August 1, 2017

(Ver. 06/02/17)

**RULE 1006-1 FEES: INSTALLMENT PAYMENTS, NONPAYMENT, WAIVER,
REFUNDS**

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(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, telephonically or~~ by mail or by e-mail if the Debtor has elected to receive notices through the Court's Debtor Electronic Bankruptcy Noticing system. The notice period shall commence for ~~personal and telephonic notice when the notice is given and shall commence for~~ mailed notices 3 days after the notice is mailed and for e-mailed notice when the notice is e-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.

Comments

1006-1(C)(1) This amendment changes: (a) the manner in which the Clerk provides notice to a filing party in connection with that party's failure to make timely payment of a required filing fee, and (b) when the applicable notice period commences. The Court's Debtor Electronic Bankruptcy Noticing system is authorized pursuant to LBR 9036-1.
[Changes effective 08/01/17.]

RULE 9006-1 BRIDGE ORDER NOT REQUIRED IN CERTAIN INSTANCE (NEW)

With respect to 11 U.S.C. §1121(d), if a motion to extend the time to file a plan is filed before the expiration of the period prescribed therein, the time automatically shall be extended until the Court acts on the motion, without the necessity for the entry of a bridge order.

Comments

9006-1 This rule is new and its application is limited to the noted Bankruptcy Code provision set forth therein. In promulgating this rule, the Court is exercising its discretion to extend time, as governed by FRBP 9006, thereby eliminating the need to file a "bridge order" in such an instance. [New Rule effective 08/01/17.]

RULE 9013-1 MOTIONS PRACTICE

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(H) *Responses to Motions*

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(3) *Time for filing response and memorandum*

....

(c) *when a hearing has been set on less than 21 days' notice*, unless the Court directs otherwise, the opposing party may file a response, with a supporting memorandum, not later than 3 days before the date of the hearing. A hearing may not be set by a party on less than 14 days' notice unless the Court grants a motion requesting an expedited hearing pursuant to paragraph (N) of this Local Bankruptcy Rule. If a hearing is set on an expedited basis, the opposing party may file a response, with a supporting memorandum, not later than 1 day before the date of the hearing or as otherwise directed by the Court.

Comments

9013-1(H)(3) (c) This amendments make explicit when a party should request an expedited hearing and what the appropriate response deadline should be in such instance. [Change effective 08/01/17.]

....

(J) *Continuances*: A motion for continuance of a hearing or trial date shall not be granted by mere agreement of counsel. The party requesting a continuance should, however, consult with opposing counsel and the trustee, if applicable, prior to requesting a continuance. The motion for continuance should state the position(s) of opposing counsel and the trustee, if applicable. Any such motion will be considered by the Court only in the presence of all counsel, and no continuance will be granted other than for good cause and upon such terms as the Court may impose.

Comments

9013-1(J) This amendment requires the party requesting a continuance to consult with opposing counsel and the trustee, if applicable, prior to filing a motion for continuance. This amendment is intended to ensure that opposing parties are apprised of continuance requests and would provide information to assist the Court in considering the motion. [Change effective 08/0117.]

(K) *Motions Practice and Procedures Guidelines; Motions for Relief from Stay Guidelines*: The Court has adopted guidelines supplementing this Local Bankruptcy Rule to facilitate and provide for uniformity pertaining to motions practice and procedures including motions for relief from stay. These guidelines shall be published and updated periodically by the Clerk, as approved by the Court (Exhibit 7 to these Local Bankruptcy Rules) and available from the Clerk upon request or from the Court's internet web site, www.vaeb.uscourts.gov.

Comments

9013-1(K) This new paragraph incorporates by reference Motions Practice and Procedures Guidelines and Motions for Relief from Stay Guidelines. [New paragraph effective 08/01/17.]

RULE 9019-1 SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

~~Rule 83.6, Settlement and Alternative Dispute Resolution, Local Rules of Practice of the United States District Court for the Eastern District of Virginia, applies in adversary proceedings before the Court. For purposes of the Settlement and Alternative Dispute Resolution provisions set out at Rule 83.6, references to: the “court” are to the bankruptcy court; “judge” are to bankruptcy judges assigned to the case; and “Chief Judge” are to the Chief Judge of the District Court.~~

(A) **Authorization:** The Court encourages the parties to meet and consult with each other to achieve settlement. Pursuant to 28 U.S.C. §§ 651, 652, and 653, as amended by the Alternative Dispute Resolution Act of 1998, the use of mediation as an alternative dispute resolution process in all adversary proceedings, contested and other matters, is authorized.

(B) **Obtaining Mediation**

(1) Upon joint motion, parties may request, but are not entitled to, mediation.

(2) Any party may request mediation on motion served on all other parties. The motion must state the basis for the request for mediation and that a good faith effort was made to seek mediation by consent without success. Parties will have 14 days from the date of service to object to the motion. The court will make a determination on the motion upon notice and a hearing.

(3) The Court may also order mediation *sua sponte*.

(C) **Order to Mediate**

(1) In any adversary proceeding, contested or other matter, mediation may only be commenced upon the entry of an order to mediate by the presiding judge.

(2) An order to mediate shall, at minimum, set forth the following:

(a) the individual appointed to act as mediator;

(b) if the parties selected a non-judicial mediator or neutral, the proposed compensation that will be subject to court approval;

(c) unless otherwise ordered by the Court, that mediation processes and procedures and the duties of the parties shall be determined by the court- appointed mediator; and

(d) that the parties or the mediator provide a report to the court of the results of the mediation immediately upon the conclusion of the mediation.

(D) *Judicial Mediators*

(1) Bankruptcy judges resident in the Eastern District of Virginia are authorized to act as mediators or neutrals.

(2) The decision regarding appointment of a judicial mediator resides exclusively with the presiding judge, and such appointment is effective only upon entry of the order to mediate.

(E) *Non-Judicial Mediators or Neutrals*

(1) The parties by consent may request the appointment of a non-judicial mediator or neutral.

(2) Appointment of a non-judicial mediator is subject to approval by the presiding judge, and such appointment is effective only upon entry of the order to mediate.

(F) *Communications with Mediators Prior to Entry of Order to Mediate*

(1) ***Judicial Mediators***: Prior to entry of the order to mediate, parties to the mediation shall not communicate with a judicial mediator about any matters pertaining to mediation.

(2) ***Non-Judicial Mediators***: Prior to entry of the order to mediate, parties to the mediation may communicate with non-judicial mediators only for the purpose of selection and proposed terms of engagement and compensation of a non-judicial mediator for appointment by the Court.

(G) ***Required Settlement Authority***: A judicial mediator to whom a case has been referred may require that counsel and/or a party representative with full settlement authority attend the mediation at any time the judicial mediator considers appropriate.

(H) ***Compensation of Non-Judicial Mediators or Neutrals***: No mediator or neutral may be compensated by contingent fee. Any compensation of a non-judicial mediator or neutral from the estate shall be subject to Court approval after notice and a hearing or as the Court otherwise orders.

(I) *Effect of Mediation on Proceedings*: Unless otherwise ordered by the Court, the appointment of a mediator or neutral shall not operate to postpone or stay the scheduling of any case or controversy nor shall such appointment be grounds for the continuance of a previously scheduled trial date or the extension of any deadlines previously scheduled by the Court.

(J) *Disclosure of Mediation Communications and Writings*: The substance of communications and writings in the mediation process shall not be disclosed to any person other than participants in the mediation process; provided, however, that nothing herein shall modify the application of Federal Rule of Evidence 408 nor shall use in the mediation process of an otherwise admissible document, object, or statement preclude its use at trial.

(K) *Appointment of ADR Administrator*: The chief bankruptcy judge may appoint an ADR Administrator for the district. Duties of the Administrator, if appointed, shall include the following: implementing, administering, overseeing and evaluating the Court's ADR program.

(L) *Other Governing Law*: Nothing contained in this rule shall in any manner negate or be in abrogation of any other source of authority for conducting mediation, whether by statute, rule, or otherwise.

Comments

9019-(1) This rule is substantively rewritten to provide additional direction to the parties and to make explicit its applicability to contested and other matters in addition to adversary proceedings. [New paragraph effective 08/01/17.]