

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF VIRGINIA

PUBLIC NOTICE

Adoption of Revision to Local Bankruptcy Rules

Effective August 1, 2017

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)

The Court has approved a revision to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Virginia, which, through the entry of Standing Order No. 17-4, takes effect August 1, 2017, and shall govern procedures in all cases pending on that date or filed thereafter.

1. Local Bankruptcy Rule 1006-1 is amended to change 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 when the applicable notice period commences. The Court's referenced Debtor Electronic Bankruptcy Noticing System is authorized pursuant to Local Bankruptcy Rule 9036-1.
2. Local Bankruptcy Rule 9013-1(H)(c)(3) is amended to make explicit regarding when a party should request an expedited hearing and what the appropriate response deadline should be in such an instance.
3. Local Bankruptcy Rule 9013-1(J) is amended to require that the party requesting a continuance 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.
4. Local Bankruptcy Rule 9019-1 is substantially rewritten to provide additional direction to the parties and to make explicit its applicability to contested and other matters in addition to adversary proceedings.
5. Local Bankruptcy Rule 9006-1 is new and its application is limited to the noted Bankruptcy Code provisions set forth therein. In promulgating this rule, the Court is exercising its discretion to extend time, as governed by Federal Rule of Bankruptcy Procedure 9006, thereby eliminating the need to file a "bridge order" in such an instance.

6. Local Bankruptcy Rule 9013-1(K) is new and substitutes for the subject matter formerly set forth in that provision. It incorporates by reference Motions Practice and Procedures Guidelines and Motions for Relief from Stay Guidelines. Both sets of Guidelines will be placed in Exhibit 7 to the Local Bankruptcy Rules and replace the current contents of Exhibit 7, which no longer will be applicable as of the implementation date of this new paragraph. The new replacement Exhibit 7 is attached.

Attachments

William C. Redden
Clerk of Court

Dated: July 11, 2017

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

In re:

)	
Adoption of Revision to Local Bankruptcy)	Standing Order No. 17-4
Rules)	
)	

ORDER ADOPTING REVISION TO LOCAL BANKRUPTCY RULES

Amendments have been made to the following Local Bankruptcy Rules: 1006-1(C)(1), 9013-1(H)(3)(c), and (J), and 9019-1. New Local Bankruptcy Rules have been designated: 9006-1 and 9013-1(K).

NOW, IT IS THEREFORE ORDERED that:

The above amended and new Local Bankruptcy Rules shall take effect on August 1, 2017, and shall govern procedures in all cases pending on that date or filed thereafter.

Dated: July 11, 2017

FOR THE COURT:

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

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);
and
NEW EXHIBIT 7 FOLLOWING LOCAL BANKRUPTCY RULES



Effective August 1, 2017

(Ver. 07/10/17)

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

....

(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

....

(H) *Responses to Motions*

....

(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 08/01/17.]

(K) ~~*Extensions*: Any request for an extension of time relating to motions must be in writing and, in general, will be looked upon in disfavor.~~ ***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 substitutes for the subject matter formerly set forth in that paragraph. It incorporates by reference Motions Practice and Procedures Guidelines and Motions for Relief from Stay Guidelines. Both sets of Guidelines will: (a) be placed at Exhibit 7 to these Local Bankruptcy Rules, and (b) replace the current contents of Exhibit 7, which no longer will be applicable as of the implementation date of this new paragraph. [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.]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Motions Practice and Procedure Guidelines

The United States Bankruptcy Court provides the following Guidelines pertaining to motions practice and procedure in the Eastern District of Virginia. The Court may, in certain instances, impose additional requirements if circumstances warrant.

The Guidelines do not alter the requirements regarding appearances at hearings pursuant to Local Bankruptcy Rule 2090-1(H).

Should any Guideline be construed so as to conflict with the Local Bankruptcy Rules of this Court, the provisions of the Local Bankruptcy Rules shall control.

Questions regarding the Guidelines may be directed to the Judge's Courtroom Deputy. Parties are reminded that the Clerk's Office is prohibited from providing legal advice.

Hearing Dates

Hearing dates appear on each Judge's respective Hearing Dates & Information page on the Court's website, which can be accessed by left-clicking on the "Judges' Hearing Dates & Information" link in the drop-down menu under "Hearing Information."

A Judge may require specific matters to be heard on designated dates and/or at designated times. Dates provided may be used only for the matters designated.

A Judge may establish a maximum number of a specific type of matter that one attorney/firm may set for one docket.

Counsel should consult a Judge's Hearing Dates & Information page for information regarding scheduling matters where evidence or legal argument will be presented.

Hearings must be set for the Division in which the case is pending, unless permission is otherwise granted.

Unless otherwise posted on a Judge's Hearing Dates & Information page, motions must be set for hearing before the Judge to whom the case is assigned.

Counsel is responsible for ensuring a matter is set for the correct date, time, and location.

The moving party should view the Court's website prior to filing a motion to ensure that the hearing date remains available and that the time frame within which the date may be used has not expired.

If a hearing needs to be scheduled for a date beyond the dates listed, the moving party should contact the Judge's Courtroom Deputy.

The moving party should make a good faith attempt to coordinate a mutually agreeable hearing date with opposing counsel.

If a Motion for Relief from Automatic Stay is scheduled for a preliminary hearing on a date that is more than 30 days after the moving party files the motion, the moving party shall be deemed to have consented to a waiver of its rights under 11 U.S.C. §362(e)(1) relating to the automatic lifting of the stay. The stay shall remain in effect until further order of the Court. (**Further guidance for these motions may be found in the Court's separate Motions for Relief from Automatic Stay Guidelines.**)

If a proposed consent order will be tendered to the Court simultaneously with the filing of a Motion for Relief from Automatic Stay, a hearing should not be scheduled and a hearing date should not be included in the Notice of Motion.

Pursuant to Local Bankruptcy Rule 3015-2, objections to confirmation of the original Chapter 13 plan filed in a case must be noticed for hearing for the date, time, and location of the confirmation hearing as set forth in the notice regarding the § 341 Meeting of Creditors. Objections to confirmation of a modified Chapter 13 plan must be noticed for hearing for the date, time, and location of the confirmation hearing as set forth in the modified plan.

Motions requesting an expedited hearing must comply with Local Bankruptcy Rule 9013-1(N), as well as with any additional requirements set forth on the respective Judge's Hearing Dates & Information page.

Parties proceeding *pro se* (without legal counsel) may utilize the dates provided on the Judges' Hearing Dates & Information pages for scheduling hearings on the enumerated types of matters. Please note that, pursuant to Local Bankruptcy Rule 9010-1, entities other than individuals (*e.g.*, corporations, partnerships, and municipalities) may not proceed *pro se* and must retain legal counsel. All noticing requirements must be complied with, or the Court may not hear the matter.

Proper Notice of Hearing

It is the moving party's responsibility to comply with proper noticing requirements, including service upon all proper parties in accordance with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, and to provide the correct date, time, and location of the hearing.

If a moving party's notice of hearing is insufficient, or the moving party has utilized an expired hearing date, the matter may not be heard.

Continuances

Information regarding a Judge's policy concerning continuances can be found on the Judge's Hearing Dates & Information page.

The party requesting a continuance is encouraged to consult with opposing counsel, and the trustee if applicable, prior to requesting a continuance and advise the Court of the position of opposing counsel and the trustee, if applicable. Continuances should be requested only for good cause and with sufficient time to allow the Court to consider the request prior to the hearing date. All continuance requests should propose a date and time for the continued hearing from the dates available on the Judge's respective Hearing Dates & Information page, if dates for such matters are provided on that page.

Telephonic Appearance

Information regarding a Judge's policy concerning telephonic appearances can be found on the Judge's Hearing Dates & Information page.

Cancelling a Hearing

Pursuant to Local Bankruptcy Rule 9013-1(O), the moving party is responsible for notifying the Court of any settlement or other valid reason that a hearing or trial need not be conducted. The moving party shall notify the Court of the cancellation of a hearing or trial in the manner(s) set forth on each Judge's respective Hearing Dates & Information page.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Motions for Relief from Stay Guidelines

The United States Bankruptcy Court provides the following Guidelines pertaining to motions for relief from stay filed in the Eastern District of Virginia. The Court may, in certain instances, impose additional requirements if circumstances warrant.

The Guidelines do not alter the requirements regarding appearances at hearings pursuant to Local Bankruptcy Rule 2090-1(H).

Should any Guideline be construed so as to conflict with the Local Bankruptcy Rules of this Court, the provisions of the Local Bankruptcy Rules shall control.

Questions regarding the Guidelines may be directed to the Judge's Courtroom Deputy. Parties are reminded that the Clerk's Office is prohibited from providing legal advice.

Motions for Relief from Automatic Stay

The following procedure is applicable with respect to motions for relief from stay under §362 and §1301 of the Bankruptcy Code. (Motions for relief from stay against a codebtor in chapter 13 cases under 11 U.S.C. §1301(c)(2) are addressed separately in Section II, below.) The provisions of Local Bankruptcy Rule 4001(a)-1 are applicable in relief from automatic stay proceedings as supplemented below.

I. Relief from the Automatic Stay under Sections 362, 1301(c)(1), or 1301(c)(3)

The preliminary hearing dates for scheduling motions for relief from stay pursuant to §362, §1301(c)(1), and §1301(c)(3) may be obtained from

- **the Court's Internet web site at www.vacb.uscourts.gov >Hearing Information> Judges' Hearing Dates & Information; or**
- **by calling the Judge's Courtroom Deputy.**

A. Selecting a Preliminary Hearing Date:

The moving party (movant) must select a preliminary hearing date from the schedule of preliminary hearing dates provided by the Clerk as set forth above. The date should be selected according to the anticipated date of filing of the motion.

If the movant selects a preliminary hearing date that is more than 30 days after filing a motion for relief, the movant shall be deemed to have consented to a waiver of the movant's

rights under 11 U.S.C. §362(e)(1) relating to the automatic lifting of the stay. The stay shall remain in effect until further order of the Court.

If the movant fails to select a preliminary hearing date, the movant shall be deemed to have consented to a waiver of the automatic lifting of the stay pursuant to 11 U.S.C. §362(e), and the Court may, in its discretion, either schedule a hearing on the motion or deny the relief sought.

All Amended Motions for Relief from Stay must include an appropriate hearing date. The original preliminary hearing date may only be used if sufficient notice time remains prior to the hearing date, pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules. The failure to select an appropriate hearing date and otherwise comply with these procedures may result in the denial of the relief sought.

For Motions for Relief from Stay filed simultaneously with a proposed consent order: DO NOT schedule a hearing or include a hearing date.

B. Notice of Motion and Response Period:

The movant must prepare a notice of motion, which shall include notice of the appropriate response period together with notice of the date, time, and location of the preliminary hearing.

A separate notice of motion (Official Form 420A) is not required, however, unless provided otherwise by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or order of the Court. The motion for relief from stay shall clearly state and conspicuously provide the following notice:

NOTICE

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then within 14 days from the date of service of this motion, you must file a written response explaining your position with the Court and serve a copy on the movant. Unless a written response is filed and served within this 14-day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the 14-day period.

(****Please note:** Pursuant to Local Bankruptcy Rule 4001(a)-1(H)(2), the notice period for motions for relief from the codebtor stay filed pursuant to Sections 1301(c)(1) or (c)(3) is 14 days. The notice period for a motion for relief from the codebtor stay under Section 1301(c)(2) is 20 days.**)

C. Service and Transmittal of the Motion and Notice :

At least 21 days prior to the preliminary hearing date, the movant must serve the Motion and Notice of Preliminary Hearing pursuant to Local Bankruptcy Rule 4001(a)-1(F), and simultaneously file with the Court, in accordance with Local Bankruptcy Rule 4001(a)-1(E) and in the manner set forth in Section I.D., below, the following items:

1. The original motion for relief from stay and notice of hearing captioned as a contested matter;
2. a properly completed proof of service indicating that the movant served the motion for relief from stay upon each party required to receive notice under Local Bankruptcy Rule 4001(a)-1(F); and
3. the proper filing fee.

D. Method of Filing:

1. Registered movant attorney users of the CM/ECF System must file the items set forth in Section I.C. electronically in accordance with the Court's CM/ECF Policy and the applicable Local Bankruptcy Rules. The filing fee shall be paid by the filer electronically.
2. Non-registered movant attorneys must file with the Court the items set forth in Section I.C., on a diskette or CD-ROM in Microsoft Word, WordPerfect, DOS text, or Acrobat PDF format. The filing fee shall be paid to the Clerk.
3. Movants who are individuals and unrepresented by counsel (*pro se*) shall file with the Court the items set forth in Section I.C., conventionally, on paper. The filing fee shall be paid to the Clerk.

II. Relief from Codebtor Stay in Chapter 13 Cases under 11 U.S.C. §1301(c)(2)

A. A movant filing a motion for relief from stay against a codebtor in a chapter 13 case under 11 U.S.C. §1301(c)(2) must follow the procedures, as set forth in Local Bankruptcy Rule 4001(a)-1(H), and file the following items in the manner set forth in Section I.D., above:

1. the §1301 motion clearly stating in the caption the subsection of 11 U.S.C. §1301 under which the party is proceeding;
2. the passive notice of motion, which shall include notice of the 20-day response period and the language set forth in Local Bankruptcy Rule 4001(a)-1(H)(2)(b); and
3. a proof of service certifying proper service of the motion pursuant to Local Bankruptcy Rule 4001(a)-1(F).

B. If an objection or response is not filed with the Court and served upon the movant no later than 20 days from the date of the filing of the motion, the movant should submit to the Court a proposed order granting the relief being sought by the movant.

If an objection is filed to the §1301(c)(2) motion, it will be scheduled for hearing and notice will be given by the Clerk's Office.