NEW LOCAL RULES FOR THE EASTERN DISTRICT BANKRUPTCY COURT

October 25, 2017

1. Changes to national Rules effective 12/1/17 were the impetus to our Local Rule changes.
   1. Major changes to Federal Rules of Bankruptcy Procedure include:
      1. Amended Rule 3012 – lien stripping may be accomplished by motion, claim objection or in a Chapter 12 or 13 plan. If in a plan, the plan must be served on the affected lienholder pursuant to Federal Rule 7004.
      2. Amended Rule 3012(c) – a request to determine the amount of a governmental unit’s secured claim may be made only by motion or claim objection (not in the plan).
      3. Amended Rule 3002(c) – in voluntary Chapter 7, 12 and 13 cases, creditors have 70 days after the order for relief to file a proof of claim. All creditors, including secured creditors, must file claims to participate in the plan, but the mortgage-holder on the debtor’s residence has an additional 50 days to supplement its claim with documents.
      4. Amended Rule 3015(g) – any determination in the plan about the amount of the secured claim controls over the proof of claim, even if the claim is not objected to.
      5. New Rule 3015.1 – debtors must use the Official Form (national) plan or a Local Form that complies with Rule 3015.1. We have adopted a Local Form.
      6. Amended Rule 2002(b) – 28 days’ notice of hearing to consider confirmation of Chapter 13 plan.
      7. Amended Rule 3007 – 30-day notice requirement for claim objections; objection and notice by first-class mail to the person most recently designated on the claimant’s original or amended proof of claim as the person to receive notices; for US government, or insured depository institutions, serve according to Rule 7004.
      8. Amended Rule 4003 – proceeding under § 522(f) to avoid a lien or transfer of exempt property can be made by motion or in a plan, provided the motion or plan is served pursuant to Rule 7004.
      9. Amended Rule 5009 – provision for declaring liens satisfied and lien released under terms of confirmed plan.
   2. Our Rules were revised to reflect the language and new provisions of the Federal Rules.
   3. These Local Rules are effective **November 1, 2017**, and applicable to pending cases to the extent practicable.
   4. This outline alerts you to major changes in the Rules.

1. New disclosure rules
   1. All debtors must **file** new **Local Form 1007** and copies of all payment advices or other evidence of payment received by the debtor from any employer within 60 days before the petition. The form should be filed with the petition or within 14 days. This is an “automatic dismissal” document, and if not filed within 45 days and it appears that the debtor has income from an employer, the case will be dismissed.
   2. Local Rule 1007.1 now requires disclosure of loan payments and transfers by non-debtor spouse.
   3. Local Rule 1007.2 now breaks required disclosures into Chapter-specific provisions.
   4. Chapter 7 required disclosures:
      1. Vehicle titles
      2. Recorded deeds and land contracts
      3. Recorded mortgages
      4. Most recent real estate tax bill
      5. Preceding 2 years’ federal and state tax returns, or transcripts
      6. DSO information
      7. Marital agreements
      8. Other documents reasonably requested by the Trustee
   5. Chapter 12 and 13 required disclosures:
      1. Preceding 2 years federal and state tax returns, or transcripts
      2. DSO information
      3. Marital agreements
      4. Other documents reasonably requested by the Trustee
   6. Local Rule 1009 – Debtor must serve notice of commencement of case and copy of Chapter 11, 12, or 13 plan on any new creditor added by an amendment and file proof of service.
   7. Local Rule 4004 – Disclosures before discharge
      1. Chapter 7 cases subject to § 522(q) must file new **Local Form 2829** no later than 7 days before last date set to object to discharge.
      2. Chapter 12 and 13 – Within 30 days of last Trustee payment, Trustee will file a certification that debtor has made all Trustee payments.
      3. Within 30 days of that certificate, Chapter 12 debtors must file new **Local Form 2830** and within 60 days of that certificate, Chapter 13 debtors must file new **Local Form 2831. Failure to file these forms will result in case closed without a discharge.**
   8. Deceased debtor disclosures – see new Local Rule 4004(d) to obtain a discharge for debtor who died before completing financial management certificate or other required disclosures.
2. New Rules for Motions to Continue/Impose Stay
   1. Rule 9013.2 – Debtors must obtain a hearing date before filing the motion. The notice of the hearing must provide 14 days to object and must be served on all creditors at least 17 days before the hearing date.
   2. Debtors must file a motion under § 362(c)(4) (impose the stay) within 30 days of the petition.
   3. Court will hold a hearing on timely filed and served motion under § 362(c)(3) or (c)(4) if:
      1. A party timely objects
      2. Debtor fails to serve one or more affidavits in support of the motion
      3. Court concludes a hearing is necessary to consider further evidence of Debtor’s good faith.
      4. Debtor fails to file proposed order if no objection is filed.
3. New Chapter 7 rules
   1. Local Rule 2070 – increases to $2,500 the amount the Chapter 7 trustee may incur and pay from property of the estate if the trustee reasonably believes the payment cannot await a final hearing.
   2. Local Rule 7041 specifies notice and disclosure requirements on dismissal of proceeding to object to or revoke a debtor’s discharge.
4. New Chapter 11 rules
   1. Local Rule 1010 – Amended Chapter 11 (or 12) plans or amended Chapter 11 disclosure statements must be accompanied by a “redline” version showing changes made.
   2. Local Rule 4004 – allows individual debtor’s case to be administratively closed after confirmation and then reopened for discharge. New Rule provides notice requirements.
   3. Prior Rules concerning sales of all assets, pre-packaged plans, and estimating fees (“fee caps” in employment applications) have been eliminated.
   4. Local Rule 9013.3 – Motions to Convert or Dismiss a Chapter 11 case
      1. Moving party must obtain hearing date before filing the motion.
      2. Objections are due no later than 21 days after service of the notice of hearing.
      3. Motion and notice must be filed and served within 24 hours of obtaining the hearing date.
      4. Failure to comply is grounds to deny the motion.
5. New Chapter 13 rules
   1. Local Rule 1009 – Debtor must serve notice of commencement of case and copy of the plan on any new creditor added by an amendment and file proof of service.
   2. Local Rule 2002.2 – Deadline to object to Debtor’s originally proposed plan is 28 days after the Trustee concludes the meeting of creditors.
   3. Local Rule 2014(d) – Chapter 13 debtor does not need court approval to employ professionals, including real estate brokers.
   4. Local Rule 2016.1 No-Look Fees – See discussion below.
   5. Local Rule 3015 – Chapter 13 plans
      1. Use of new **Local Form Plan** is mandatory
      2. If debtor files the plan with the petition, the Court will serve it. Otherwise the debtor must serve it.
      3. If the plan, amended plan or modified plan proposes to strip liens or security interests, debtor must serve the plan in the manner provided for a summons and complaint in Federal Rule 7004.
   6. Changes – must use **Notice and Request to Amend Unconfirmed Plan** form or **Notice and Request to Modify Confirmed Plan** form.
      1. Any successive pre‐confirmation amendment must restate, without incorporation by reference, the effective terms of all preceding plan amendments. Any term proposed in a previous amended plan that is not restated in a subsequent amendment will be deemed superseded and no longer part of the plan.
      2. Unless the court for cause shown limits the notice, a debtor requesting a pre‐confirmation amendment or any party moving for a post‐confirmation modification must give the trustee, United States trustee and all creditors not less than 21 days’ notice of the time fixed for filing objections.
      3. Post-confirmation modification may include a request for approval of attorneys’ fees.
   7. Local Rule 4001 – Pre-confirmation adequate protection payments – Rule has been renumbered and stylistically changed. Substance remains the same.
   8. Local Rule 4001.1 – Motions for relief from stay – Rule has been renumbered and stylistically changed. Now includes requirements that creditors seeking abandonment must comply with Rule 6007’s service requirement.
6. New rules for employing, compensating and changing professionals
   1. Local Rule 2014 – Application for employment must spell out anticipated services and proposed method of compensating. If application is proposing a contingency fee under § 328, application must state whether the applicant is willing to have the fees reviewed under the reasonableness standards of § 330.
   2. Application must be accompanied by a proposed order. [Exhibit to application? Or use proposed order event?]
   3. Applicant must give a 14-day notice of the Application to Employ, but court can shorten time or approve employment sooner.
   4. Chapter 13 debtor does not need court approval to employ professionals, including real estate brokers.
   5. Local Rule 2016 – Applications for compensation must include the following information:
      1. List of attorneys, paralegals, etc. performing services and a description of the biller’s experience and billing rate;
      2. Chronological record of each timekeeper’s time, in tenths of an hour, identifying subject matter and all parties with whom the timekeeper communicated;
      3. Description of each document prepared and each hearing or trial attended;
      4. Summary of total time expended by each biller;
      5. Detailed breakdown of disbursements and expenses;
      6. Justification for more than one timekeeper performing the same task, including attending a meeting or hearing;
      7. Disclosure of prior compensation awards in the case, including the date or docket number of prior orders approving compensation; and
      8. Disclosure of total fees and expenses applicant has received through the date of the application.
   6. Court may disallow, without prejudice and without a hearing, an applicant’s compensation request if the application does not comply with this new Rule. The applicant may request a hearing within 14 days of such disallowance or may file a new application.
   7. Local Rule 2016.1 - No-Look fees in Chapter 13 cases
      1. Attorneys for Chapter 13 debtors need not file a fee application if a confirmed plan directs the trustee to pay attorney compensation in an amount that is not greater than the presumed reasonable fee and no party has objected to the fee.
      2. The presumed reasonable fee for cases filed after November 1, 2017 is $4,500 ($5,000 if MMM motion is filed). But, the presumed reasonable fee presumes that the attorney performed certain tasks, including attending all scheduled hearings and filing and serving plan amendments and modifications. See the description of the presumed reasonable fee in the Appendix.
      3. If the court dismisses the case before confirmation, the presumed reasonable fee of $1,000 is deemed an allowed administrative claim under 11 U.S.C. § 503(b), and the trustee is authorized to pay the attorney up to that amount before refunding any plan payments to the debtor. Note the $1,000 includes any pre-petition fees (but not costs) paid by the debtor. The attorney will not have to file a fee application for fees less than $1,000 if the case is dismissed pre-confirmation. Creditors and the debtor will have an opportunity to object to this payment, and the debtor’s attorney will have a similar opportunity to request more than $1,000, by filing a fee application.
   8. Local Rule 9010 – Withdrawal and substitution of attorneys of record – Court approval is required to withdraw or substitute as attorney for the debtor or party to a contested matter or adversary proceeding. The new Rule spells out the notice requirements.
7. New claim objection rules
   1. Local Rule 3007 – Claim objection must be supported by one or more affidavits or declarations unless objection rests solely on application of law to facts of which the court can take judicial notice (e.g., claim was late)
   2. Objector must serve a notice with the claim objection, giving the claimant 30 days to respond.
   3. Objector must file a declaration of service of the claim objection and notice. **Note that first class mail to the address designated on the claimant’s most recently filed proof of claim suffices, except for the federal government or an insured depository institution, which must be served pursuant to Federal Rule 7004.**
   4. Court will ordinarily schedule a hearing only when a timely response is filed, but may schedule a hearing if the affidavit is not sufficient.
8. New litigation/service rules
   1. Local Rule 2004 – Rule 2004 exam motions must be served on the debtor, UST and entity to be examined.
   2. Local Rules 7016 and 7026 spell out which FRCP apply in adversary proceedings.
   3. Local Rule 9004 – Establishes page limits for pleadings
   4. Local Rule 9006 – Motions for extensions of time must identify the original deadline and the requested extension date
   5. Local Rule 9013.1 – Proof of service – COS must list names and mailing addresses of parties served through non-CMECF service. Per Local Rule 1007, the matrix is the official mailing list to be used for service.
   6. Local Rule 9014 – Court action by negative notice. Afford at least 14 days after service of a notice to object, unless the Court, Bankruptcy Rules or Bankruptcy Code require a different objection period, or unless the movant moves to modify the objection period.
   7. Local Rule 9014.1 – Codifies the 7-day rule for proposed orders. Note this applies to orders arising from contested hearings.
   8. Local Rule 9029 – General provisions including photography ban; attorney discipline rules; requirement that entities must be represented by legal counsel.
9. New electronic filing rules
   1. Local Rule 5005 - All documents must be submitted for filing in Portable Document Format (“PDF”). Pleadings and proposed orders must be converted to PDF directly from the filer’s word processing software rather than scanned. Documents must be submitted in text searchable format, whenever possible.
   2. Local Rule 5005.2 Documents may not be filed by fax or email unless the court specifically authorizes.
   3. Local Rule 5005.3 Proposed orders must be submitted in editable PDF format, not scanned.
10. New jurisdictional rules
    1. Local Rules 7008, 7012, 9014.2, 9027 relate to consent to entry of final orders by the bankruptcy court.
    2. Local Rule 5011 – motion to withdraw the reference.
    3. Local Rule 7067 – Court Registry Investments System (for interpleader funds)