

LOCAL RULES COMMITTEE MEETING
JANUARY 11, 2023

REVISED AGENDA

- 1. LR 1004.1: Petitions Filed on Debtor's Behalf by a Court-Appointed Representative, Holder of Power of Attorney, or Proposed Guardian Ad Litem**
 - Discussion: do we need a rule?
 - See attached draft of proposed rule – for discussion only

- 2. LR 2004: Rule 2004 Examinations**
 - See attached draft of proposed rule from Michelle Cramer
 - See attached draft of proposed rule from the judges

- 3. LR 3003: Time for Filing Proof of Claim or Interest in Chapter 11 Cases**
 - Discussion: do we need a rule?
 - See attached draft of proposed rule from Jerry Kerkman and proposed revision. The attachment to this revised agenda replaces the previous attachment.

- 4. LR 5005, 5005.1, 1002, 1002.1, 1008: Original signatures and retention of documents**
 - Merge these rules into one multi-part rule?
 - Should the court consider adopting a rule similar to the attached?
 - Adopt Docu-sign?
 - Appropriate retention periods?

- 5. LR 9013.2: Motions to Continue or Impose the Automatic Stay**
 - Affidavit in support of motion must be filed with the motion or the debtor will be required to appear in person at the hearing?

6. LR 4001.1 – Motions for Relief from Stay

- If a 14-day notice period is required, do creditors need to seek co-debtor stay relief by separate motion?
- Require servicers to transfer supplemental claim at the same time they transfer main claim? Or let trustee file a motion to effectuate the transfer of the supplemental claim? Or add language to orders on motions for relief from stay: the trustee shall make payments on the supplemental claim to the entity holding Claim No. __ at the time of the payment?

7. Additional comments, questions, or concerns.

PROPOSED NEW LOCAL RULE 1004.1

LR 1004.1 **Petitions Filed on Debtor's Behalf by a Court-Appointed Representative, Holder of Power of Attorney, or Proposed Guardian Ad Litem**

- (a) **Appointment Instrument Required to be Filed with Petition.** If a bankruptcy petition is filed on a debtor's behalf by a representative, such as a guardian, conservator, or like fiduciary, appointed by a court of competent jurisdiction before the filing of the petition, a copy of the appointment instrument shall be filed with the petition.

- (b) **Filing of a Petition by the Holder of a Power of Attorney or Next Friend.**
 - (1) **Power of Attorney and Declaration Required.** A petition filed by the holder of a power of attorney or next friend (the "Filing Party") under Bankruptcy Rule 1004.1 must be accompanied by a copy of the power of attorney, if any, and the Filing Party's declaration pursuant to 28 U.S.C. § 1746 and as outlined in subsection (b)(2), below ("Declaration"). The Filing Party shall serve a copy of the petition and the Declaration on the debtor, any other party required to be served by the instrument which authorized the Filing Party to file the petition, all creditors, the United States trustee, any governmental entity from which the debtor is receiving funds, and the debtor's closest relative, if known.

 - (2) **Contents of Declaration.** The Declaration must include the following information:
 - (a) the Filing Party's name, address, and relationship to the debtor;

 - (b) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;

 - (c) if applicable, whether the power of attorney expressly authorizes the filing of a bankruptcy petition, and whether the debtor was a minor or has been adjudicated an incompetent person prior to the date of the power of attorney;

 - (d) whether the debtor consents to the filing of the petition;

 - (e) the reason for filing the bankruptcy petition;

 - (f) if applicable, why the debtor is unable to file the petition himself or herself or otherwise unable to manage his or her financial affairs;

- (g) whether any of the debtor's debts were incurred for the benefit of the Filing Party; and
- (h) the names and addresses of any persons known to the Filing Party who may object to the filing of the petition on debtor's behalf.

(c) Appointment as Guardian Ad Litem

(1) Motion Required. Any person who seeks appointment as the debtor's guardian ad litem in a bankruptcy case pursuant to Rule 1004.1 of the Federal Rules of Bankruptcy Procedure must file a motion seeking such appointment, accompanied by a proposed order and the Declaration required by subsection (c)(2), below.

(2) Required Disclosures and Documents.

(a) Any person seeking appointment as the debtor's guardian ad litem in a bankruptcy case must file a Declaration providing the following information:

(i) why appointment of the movant as guardian ad litem is necessary;

(ii) why appointment of the movant as guardian ad litem would be in the debtor's best interest;

(iii) the fee, if any, the movant would charge the debtor for serving as guardian ad litem;

(iv) the movant's professional and criminal history, if any;

(v) the movant's competence to handle the debtor's financial affairs, including the movant's knowledge of the debtor's financial affairs;

(vi) whether the movant has any current or potential future interest in the debtor's financial affairs, other than the proposed fee; and

(vii) the names and addresses of any persons known to the movant who may object to the appointment of the movant.

(b) If the movant seeks appointment as the debtor's guardian ad litem in the bankruptcy case and alleges that the debtor is an incompetent person, the Declaration must be accompanied by the following documents:

(i) a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs; and

(ii) a copy of any power of attorney or other document giving the movant the authority to act for the debtor.

(c) Any motion seeking appointment as the debtor's guardian ad litem in a bankruptcy case filed pursuant to subsection (c)(2)(a) of this rule will be set for hearing within 14 days of filing.

(3) Authority to Act for Debtor Pending Appointment of Guardian Ad Litem. Until entry of an order appointing the movant as the debtor's guardian ad litem in the bankruptcy case, unless the court orders otherwise, the movant shall take no further action in the bankruptcy case on the debtor's behalf, other than seeking an extension of time with respect to any required action of or filing by the debtor.

PROPOSED REVISED LOCAL RULE 2004

(drafted by Michelle Cramer)

LR 2004 –Rule 2004 Examinations

- (a) **Ex Parte Relief.** Rule 2004 orders are generally granted as *ex parte* without time to respond. A party subject to a Rule 2004 order may timely file a motion for reconsideration or motion for protective order.
- (b) **Service.** The motion must be served on the debtor, debtor's attorney (if any), the trustee (if any), the United States trustee, and the entity to be examined.
- (c) **Examination; Production.** A Rule 2004 order may not require the attendance at a deposition or production of documents on less than twenty-one (21) days' notice.
- (d) **Reduce or Extend Examination and Production Objection Period.** Nothing in this rule prohibits parties from stipulating to an earlier or later examination, document production, objection to the Rule 2004 order, or the protective order.
- (e) **Objections; Protective Orders.** Any objection to an order for a Rule 2004 examination shall be in the form of a Motion for a Protective Order. *See* Fed. R. Civ. P. 26(c); Fed. R. Bankr. P. 7026(c). Such motion shall be stated with particularity. In the absence of exigent circumstances, the motion shall be filed within fourteen (14) days of the service of the examination order or before the examination is convened, whichever is earlier.
- (f) **Stay.** The timely filing of a motion for a protective order as provided for in subparagraph (e) shall stay the order for examination until the Court acts on the motion.

PROPOSED REVISED LOCAL RULE 2004

(Judges' draft)

LR 2004 –Rule 2004 Examinations

(a) **Meet and confer requirement for a debtor represented by counsel.**

(1) Before filing a motion under Fed. R. Bankr. P. 2004 for the examination of, or the production of documents or electronically stored information from, a debtor represented by counsel, the moving party must attempt to confer with the debtor's attorney to ascertain whether the debtor consents to the examination and/or document production and to arrange a mutually agreeable date, time, place, and scope of the examination or production.

(2) A motion under Fed. R. Bankr. P. 2004 for the examination of, or the production of documents or electronically stored information from, a debtor represented by counsel must be accompanied by a declaration stating how the movant satisfied subparagraph (a)(1)'s meet and confer requirement.

(b) **Time for examination or production.** If a motion for examination or production under Fed. R. Bankr. P. 2004 requests that an examination or production occur fewer than 21 days after the date on which the motion is filed, the motion and any supporting declarations must show good cause for affording fewer than 21 days to comply.

(c) **Immediate adjudication.** The court may adjudicate a motion under this rule immediately and without notice or a hearing. Local Rule 9014(a) does not apply to a motion for examination or production.

(d) **Service of motion.** The motion need be served only on the debtor, the debtor's attorney (if any), any trustee, the United States trustee, any official committee, and the entity to be examined.

(e) **Order.**

(1) The moving party must separately file a proposed order when filing the motion.

(2) The moving party must serve any order adjudicating the motion within two days of the order's entry on the entity to be examined, unless that entity received electronic notice upon entry, and on the debtor, if the debtor is not represented by counsel.

(f) **Subpoena.** To compel a non-debtor entity to appear for examination or to produce documents or electronically stored information, after the court enters an order granting a

motion for examination or production under Fed. R. Bankr. P. 2004, a party must issue and serve a subpoena in accordance with Fed. R. Bank. P. 2004(c) and 9016.

- (g) **Stipulations to alter examination or production.** Unless the court orders otherwise, the parties to an order entered under this rule may stipulate to a different date, time, place, or scope for the examination or production of documents or electronically stored information other than those stated in the order.
- (h) **Objections; protective orders.**
- (1) Unless the court orders otherwise, a party ordered under this rule to appear for examination or to produce documents or electronically stored information may move for a protective order and may move to quash or modify any resulting subpoena pursuant to Fed. R. Civ. P. 26(c) and Fed. R. Bankr. P. 9016.
 - (2) A party filing such a motion must file and serve a notice that complies with Local Rule 9014(a).
 - (3) A motion requesting that an order entered under this rule be vacated or modified, a resulting subpoena modified or quashed, or a protective order entered must be filed no later than 14 days after the challenged order's entry or before the date set for the examination or production, whichever is earlier.
 - (4) An entity moving under this paragraph must file a declaration with the motion specifying the movant's good faith efforts to confer with the party entitled to conduct the contested examination or production to resolve the dispute.
 - (5) Any objection to a motion made under this paragraph must be filed no later than 7 days after the motion is filed; the objecting party must file a declaration with its response to the motion describing the objecting party's specific efforts to resolve the dispute.
 - (6) The court may adjudicate motions filed under this paragraph without a hearing if the court concludes that the circumstances so warrant.
 - (7) Unless the court orders otherwise, the timely filing of a motion under this paragraph stays the effectiveness of an order for examination or production entered under this rule, and any resulting subpoena, until the court adjudicates the motion.

PROPOSED NEW LOCAL RULE 3003

(drafted by Jerry Kerkman; to replace draft circulated January 6, 2023)

LR 3003 – Chapter 11 Claim Bar Date.

- (a) **Entry of Bar Date Order.** As soon as practicable (i) 30 days after the order for relief is entered or (ii) after the debtor has filed all its schedules, whichever is later, and without a motion, the Court will enter an order setting a deadline for the filing of proofs of claim under Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure. The bar date will be approximately 60 days from the entry of the order setting the bar date.
- (b) **Motion for Different Bar Date.** Before all the entry of an order setting the bar date, the debtor may file a motion requesting a bar date order that setting a deadline that varies from this local rule or requests specific provisions in the order.

PROPOSED NEW LOCAL RULE 3003

LR 3003 – Chapter 11 Claim Bar Date.

- (a) **Motion for bar date order.** Unless the court orders otherwise, a chapter 11 debtor not proceeding under subchapter V must move to set a deadline for the filing of proofs of claim by creditors under Fed. R. Bankr. P. 3003(c)(3) no later than 30 days after the debtor has filed all required schedules and the statement of financial affairs.
- (b) **Minimum time to file claims.** If a chapter 11 debtor moves to set the deadline for filing claims by creditors at a date less than 60 days from the entry of the order setting that date, the motion must show good cause for the period requested.
- (c) **Subchapter V bar date.** When a chapter 11 debtor elects to proceed under subchapter V, the court may set the deadline for filing claims without a motion.

From the Bankruptcy Court for the Middle District of North Carolina.

A "Filing User" is defined as "a person who has been approved as a filer in the court's CM/ECF System" under the court's local rule.

LOCAL RULE 5005-4(5)

ORIGINAL SIGNATURES, CERTIFICATION & RETENTION REQUIREMENTS

(a) Authorized Forms of Original Signatures.

The following constitute original signatures on a paper filed electronically through the court's CM/ECF System under these rules and the Federal Rules of Bankruptcy Procedure, including Rule 9011:

- (1) for non-Filing Users:
 - (A) a wet ink signature, with a printed or typed name provided below; or
 - (B) an image with a digital signature from a software product that uses encryption and/or multi-factor authentication to create a secure electronic signature that uniquely identifies the signer and ensures that the signature is authentic and has not been altered or repudiated, with a printed or typed name included or provided below;
- (2) for Filing Users, in addition to the provisions of Rule 5005(a)(2)(C) of the Federal Rules of Bankruptcy Procedure:
 - (A) a printed or typed signature of a Filing User other than the one who files the paper, consisting of that person's name on a signature block, provided that person has provided written authorization to the filer to affix a signature on the paper; or
 - (B) any of the signature forms listed in subsection (a)(1).

(b) Original Signature of Non-Filing User Required.

Papers that require an original signature from a non-Filing User include:

- (1) any paper that is required to be verified by a non-Filing User under Rule 1008 of the Federal Rules of Bankruptcy Procedure or that contains an unsworn declaration as provided in 28 U.S.C. § 1746 (e.g., petitions, lists, schedules, statements, or amendments);
- (2) any declaration, affidavit, pleading, or other paper in which a non-Filing User verifies, certifies, affirms, or swears under oath or penalty of perjury the truth of the matters set forth in that paper; and
- (3) any consent order or proposed settlement under Rule 9019 of the Federal Rules of Bankruptcy Procedure that imposes binding terms or obligations on a non-Filing User.

(c) Printed or Typed Signature of Non-Filing User.

A Filing User may file a paper containing a printed or typed signature of a non-Filing User that consists of that person's name on a signature block, provided the Filing User or that Filing User's law firm or employer retains the paper with the original signature of that person in accordance with subsection (e).

(d) Certification.

Use of the court's CM/ECF System to electronically file a paper constitutes certification by the Filing User who files the paper and any agent authorized by the Filing User, under oath or penalty of perjury, that:

- (1) all parties indicated to have signed the paper have executed original signatures under one of the approved methods described in subsection (a);
- (2) all Filing Users for whom a printed or typed signature appears (e.g., consent order) have given the filer written authorization to affix their signatures, and the filer or that filer's law firm or employer has retained evidence of such authorization in accordance with subsection (e); and
- (3) the Filing User has authorized the electronic filing of the signed paper.

(e) Retention.

- (1) Retention of Original Signatures.
 - (A) Wet Ink Signatures. In the case of an electronically filed paper containing a wet ink signature of any person who is not a Filing User, the Filing User who files the paper or that Filing User's law firm or employer must retain the paper containing the original wet ink signature until four years after the closing of the case or proceeding in which the paper is filed.
 - (B) Digital Signatures. In the case of an electronically filed paper containing a digital signature as described in subsection (a)(1)(B), the Filing User who files the paper or that Filing User's law firm or employer must retain, in electronic format, the paper containing the digital signature in a manner that retains all data necessary to ensure the authenticity of the electronic signature until four years after the closing of the case or proceeding in which the paper is filed.
 - (C) Printed or Typed Signatures. In the case of an electronically filed paper containing a printed or typed signature of a person other than the filer, the Filing User who files the paper or that Filing User's law firm or employer must retain the following until four years after the closing of the case or proceeding in which the paper is filed:
 - (i) for a non-Filing User, the paper containing the original signature; and
 - (ii) for another Filing User, the written authorization to affix that other Filing User's printed or typed signature on the paper.
- (2) Review upon Request. Upon a request from the court, a Filing User or that Filing User's law firm or employer, as appropriate, must provide an original signature for review.
- (3) Filing User Departure from Law Firm or Employer. If a Filing User departs the Filing User's law firm or employer, whoever at that time has custody or control over the records required to be retained under subsection (e)(1) is solely responsible for retention of those records in the form and manner required.