

LOCAL RULES COMMITTEE MEETING

FEBRUARY 13, 2023

AGENDA

1. Court's practice of designating counsel who file bankruptcy cases on behalf of debtors as counsel of record for those debtors in adversary proceedings.

- Intended to maximize the likelihood that debtors receive notice of adversary proceedings commenced against them and the potential for representation in the proceeding
- Court generally grants requests to withdraw when the debtor has not engaged counsel to provide representation beyond matters arising in the main bankruptcy case
- Should the court alter its practice?
 - Designate counsel of record for a debtor-defendant in an adversary proceeding only when counsel files a notice of appearance?
 - Other?

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

- Review of revised rule based on suggestions from the last meeting

3. LR 2004: Rule 2004 Examinations

- Review of revised rule based on suggestions from the last meeting

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 4001.1: Motions for Relief from Stay

- Supplemental claim local rule?
 - Review of preliminary draft
- Require 14-day notice even if motion includes request for relief from co-debtor stay?
- 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 to clarify that the trustee shall make payments on the supplemental claim to the entity holding Claim No. __ at the time of the payment?

6. Additional comments, questions, or concerns

PROPOSED REVISED LOCAL RULE 1004.1

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

- (a) **Signing of Petition.** If a bankruptcy petition is filed on behalf of a debtor by a court-appointed representative, the holder of a power of attorney, a proposed next friend, or a proposed guardian ad litem (the “Filing Party”), the petition must be signed by the Filing Party and must state that the Filing Party is signing the petition as a court-appointed representative, the holder of a power of attorney, a proposed next friend, or a proposed guardian ad litem.
- (b) **Motion.**
- (1) **Timing.** The Filing Party must file a motion seeking to be appointed as the debtor’s next friend or guardian ad litem pursuant to Rule 1004.1 of the Federal Rules of Bankruptcy Procedure at the same time as the filing of the petition.
 - (2) **Contents of Motion.** The motion must identify the specific duties that the Filing Party anticipates performing on behalf of the debtor in the case. The motion may request that the court appoint the Filing Party to perform any or all of the debtor’s duties during the pendency of the case.
 - (3) **Proposed Order.** The Filing Party must separately file a proposed order when filing the motion.
 - (4) **Declaration.** The motion must be accompanied by a declaration pursuant to 28 U.S.C. § 1746 providing the following information:
 - (i) the Filing Party’s name, address, and relationship to the debtor;
 - (ii) whether the Filing Party, or any other person (to the best of the Filing Party’s knowledge, information and belief), was appointed as a representative for the debtor under nonbankruptcy law before the petition was filed;
 - (iii) a copy of any such power of attorney, court order, or appointment instrument;
 - (iv) why the debtor is unable to file the petition himself or herself or otherwise unable to manage his or her financial affairs;
 - (v) whether the debtor consents to the filing of the petition, if known;
 - (vi) the reason for filing the bankruptcy petition;
 - (vii) the Filing Party’s competence to handle the debtor’s financial affairs, including the Filing Party’s knowledge of the debtor’s financial affairs;
 - (viii) whether any of the debtor’s debts were incurred for the benefit of the Filing Party; and
 - (ix) the names and addresses of any persons known to the Filing Party who may object to the filing of the petition on the debtor’s behalf.
 - (5) **Service.** The motion, declaration, and proposed order must be served on the debtor, any trustee, the United States trustee, and any person identified in paragraph (b)(4)(ix) of this rule.

PROPOSED REVISED LOCAL RULE 2004

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~~ include a certification that the movant has in good faith conferred or attempted 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.

(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~~ three 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 21 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-certification 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 certification with its response to the motion describing-specifying the objecting party's good faith specific efforts to confer with the movant 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.

- (i) Exception for Chapter 13 Trustee. This rule does not apply to motions by a chapter 13 trustee to require a debtor to produce information and extend the trustee's deadline to object to confirmation.

DOCU-SIGN/SIGNATURES/RETENTION

CURRENT LOCAL RULE 5005

LR 5005 Electronic Filing

- (a) The court will accept for filing documents submitted, signed, or verified by electronic means, which comply with procedures established by the court. Electronic filing is mandatory for all attorneys who practice in this district, except in limited, emergency circumstances, or where the attorney has received a waiver from the Chief Judge of the Bankruptcy Court. If an attorney encounters emergency circumstances that require the attorney to file documents in paper form, the paper filing must be accompanied by a letter briefly describing the emergency circumstances that prevented the attorney from filing electronically.
- (b) 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.

CURRENT LOCAL RULE 5005.1

LR 5005.1 Retention of Electronically Filed Documents

- (a) *Documents that must contain original signatures of a debtor or other entity.* A party that files electronically a document that is required to contain an original signature, including a document signed under penalty of perjury pursuant to 28 U.S.C. § 1746 or verified under Fed. R. Bankr. P. 1008, must maintain the document for a period of 5 years after the closing of the case, unless the court orders a different period. Upon request of the court or any party in interest, the filer must provide original documents for review.
- (b) *Retention of electronically filed documents containing original signatures.* As an alternative to maintaining the documents referred to by subsection (a) for 5 years, the filer may have the original document, including any original signature, scanned, digitized and electronically stored for 5 years. An electronically stored document will be deemed a counterpart intended by the person executing or issuing it to have the same effect as an original pursuant to Fed. R. Evid. 1001(d), provided the person or persons executing or issuing the document have signed and filed in the case a Verification of Signature and Designation of Electronic Counterpart as Original as included in the Appendix to these Local Rules. On the request of the court or any party in interest, the filer must provide a copy of the electronic document.

CURRENT LOCAL RULE 1002

LR 1002 Petitions Filed Using Non-Electronic Means

Debtors who file petitions using non-electronic means must file an original of all documents; debtors may not file additional copies unless the court orders otherwise.

CURRENT LOCAL RULE 1002.1

LR 1002.1 Electronically Filed Cases: Debtor to Maintain Paper Copies

Debtors who file electronically must bring to the 11 U.S.C. § 341 meeting of creditors signed originals of their petition, schedules and Statement of Financial Affairs, including any amendments, and furnish those originals to the trustee upon request.

CURRENT LOCAL RULE 1008

LR 1008 CM/ECF Login and Password Constitute Signature

The user login and password required to submit documents to the CM/ECF System constitute the registered user's signature on electronic documents filed using that system. By filing a petition, schedule, statement, amendment, stipulation or other verified document containing a signature of a person other than the registered user, the registered user represents that person, in fact, signed the document. "S/____" or a similar notation constitutes a signature for purposes of this Local Rule.

SAMPLE RULE ON SIGNATURES AND DOCU-SIGN

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.

PROPOSED LOCAL RULE 3002

LR 3002. Supplemental claims.

- (a) **Filing of supplemental claims by creditor.** A holder of an allowed claim provided for in a debt-adjustment or reorganization plan that is secured by a lien on the debtor's property may amend its proof of claim to include amounts due and owing after the filing of the bankruptcy petition by filing a proof of supplemental claim using Local Form xxxx. The clerk of court, for purposes of administering the claims register, will list supplemental claims separate from the claims they supplement.
- (b) **Required filing of supplemental claim after denial of relief from stay.** A creditor that moves for relief from the 11 U.S.C. §362(a) stay to exercise rights under nonbankruptcy law in the debtor's property that secures a claim provided for in a chapter 11, 12, or 13 plan based on amounts due and owing after the filing of the bankruptcy petition must file any supplemental proof of claim for those amounts no later than 45 days after entry of an order denying the motion, unless the court orders otherwise.
- (c) **Filing of supplemental claims by debtor or trustee.** If a creditor fails timely to file a supplemental claim, the debtor or trustee may file the supplemental proof of claim pursuant to Federal Rule of Bankruptcy Procedure 3004.
- (d) **Objections to supplemental claims.** An objection to a supplemental claim may be made and will be governed by Federal Rule of Bankruptcy Procedure 3007 and Local Rule 3007; any order allowing or disallowing a supplemental claim may be reconsidered as provided in Federal Rule of Bankruptcy Procedure 3008.
- (e) **Effect of withdrawal, transfer, or assignment claim on supplemental claim.** The withdrawal, transfer, or assignment of a claim that has been supplemented under this rule results automatically in the withdrawal, transfer, or assignment of all related supplemental claims.
- (f) **Application of Rule 3002.1 to supplemental claims.** Federal Rule of Bankruptcy Procedure 3002.1 applies to all supplemental claims that supplement claims to which that rule otherwise applies.