

LOCAL RULES COMMITTEE MEETING

APRIL 19, 2023

AGENDA

1. LR 2004

- Review proposed stylistic revisions.

2. LR 5005, 5005.1, 1002, 1002.1, 1008: Original signatures and retention of documents

- Update from Michelle Cramer on U.S. Trustee's position.
- Merge these rules into one multi-part rule?
- Should the court consider adopting a rule similar to the attached?
- Appropriate retention periods?

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

- Review of proposed rule regarding court's practice of designating counsel who file bankruptcy cases on behalf of debtors as counsel of record for those debtors in adversary proceedings.

4. LR 4001.1: Motions for Relief from Stay

- Review revised draft of supplemental claim local rule.
- Review proposed revisions to Local Rule 4001.1

5. LR 9013.1: Proof of Service

- Review proposed revisions requiring use of the matrix as generated on the day documents are mailed.

6. Proposed new LR 9037: Motions to Restrict Public Access and Redact Document.

- If a filer receives a notification from the clerk that a document contains personal information in violation of Fed. R. Bankr. P. 9037, this rule would give the filer one chance to correctly comply with Fed. R. Bankr. P. 9037(h).

- The rule would require the filer to file the motion to redact, pay the fee, file the proposed order, and file a redacted document within 30 days (or a different period?) after receiving notice.
- If the filer does not comply, the court would strike the document and the document would be treated as if it had never been filed.
- The rule would apply to proofs of claim?
- The rule could also clarify the procedure for filing a motion to redact pursuant to Fed. R. Bankr. P. 9037.
- Does the court need to have a training session on how to file motions to redact in compliance with the national rule?

7. Other local rules that the court should consider revising, deleting, adding?

8. Additional comments, questions, or concerns

PROPOSED REVISED LOCAL RULE 2004

LR 2004 – Rule 2004 Examinations

- (a) **Definition.** In this rule, “Rule 2004 Examination” means the examination of, or the production of documents or electronically stored information from, an entity under Fed. R. Bankr. P. 2004.
- (b) **Meet and confer requirement for a debtor represented by counsel.** Before filing a motion for a Rule 2004 Examination of a debtor represented by counsel, the moving party must in good faith confer or attempt to confer with the debtor’s attorney to ascertain whether the debtor consents to the Rule 2004 Examination and to arrange a mutually agreeable date, time, place, and scope. The motion must include a certification that the movant has complied with this local rule.
- (c) **Time for examination or production.** If a motion for a Rule 2004 Examination 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.
- (d) **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 a Rule 2004 Examination.
- (e) **Service of motion.** The motion for a Rule 2004 Examination 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.
- (f) **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 for a Rule 2004 Examination within 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.
- (g) **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 Rule 2004 Examination, the moving party must issue and serve a subpoena in accordance with Fed. R. Bank. P. 2004(c) and 9016.

- (h) **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 Rule 2004 Examination other than those stated in the order.
- (i) **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 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 certification with its response to the motion specifying the objecting party's good faith 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.
- (j) **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 RULE DESIGNATING COUNSEL WHO FILE BANKRUPTCY CASES ON BEHALF OF DEBTORS AS COUNSEL OF RECORD FOR THOSE DEBTORS IN ADVERSARY PROCEEDINGS

Anytime an adversary complaint is filed against a represented debtor, the clerk will add the debtor's attorney as counsel of record for the debtor-defendant in the adversary proceeding in the CM/ECF system. The addition of the debtor's attorney as counsel of record in CM/ECF is intended for informational purposes only and is not a determination by the court that the debtor and the debtor's attorney have reached an agreement for the debtor's attorney to represent the debtor in the adversary proceeding. Debtor's counsel will only be deemed to be counsel of record for the debtor in the adversary proceeding upon the filing of a notice of appearance or a responsive pleading on behalf of the debtor in the adversary proceeding.

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-supplement~~ 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 separately 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 ~~45-70~~ 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.

PROPOSED REVISED LOCAL RULE 4001.1

LR 4001.1 Motions for Relief from Stay

- (a) *Motion for relief from stay as to real property in a Chapter 13 case.* A party moving for relief from stay under 11 U.S.C. § 362(d)(1) or (d)(2) with respect to real property in a Chapter 13 case must:
- (1) State in the motion that the debtor has indicated an intent to surrender the real property in question ~~when in~~ the debtor's Chapter 13 plan ~~so provides~~. If the debtor has indicated an intent to surrender the real property in the debtor's chapter 13 plan, the movant is not required to file the Affidavit required by Local Rule 4001.1(a)(4), even if the motion is also based on a payment default.
 - (2) File the following with the motion when the motion is based in whole or in part on the debtor's failure to make one or more periodic post-petition payments:
 - (A) A copy of the note;
 - (B) A copy of the mortgage, land contract, or other agreement evidencing a lien;
 - (C) Evidence of the lien's perfection; and
 - (D) If applicable, a copy of all documents in the chain of assignment, unless such documents have already been filed and the motion provides record citations for each document not filed with the motion.
 - (3) The motion must describe the basis on which the moving party has authority to enforce the note. An objecting party or the court may require the moving party to demonstrate that basis through supporting documents, such as, if a loan servicer is making the motion on behalf of the noteholder, a copy of the loan servicing agreement or an abridgment thereof that grants authority to the loan servicer to file the motion.
 - (4) The moving party must also file with the motion a separate Affidavit signed by an officer, employee, or agent who has personal knowledge of averred supporting facts including the following:
 - (A) A description of the property, including its street address, municipality and state;
 - (B) An itemization of the post-petition arrearage that the

movant alleges is due;

- (C) A complete payment history from the date the moving party alleges the debtor's post-petition account was last current, unless the motion is based on grounds other than the debtor's failure to make one or more periodic post-petition payments to the moving party~~a plan-payment default~~. The payment history must substantially conform to the form set forth in the Appendix to these Local Rules;
- (D) If the motion is based on a default in making plan payments to the Chapter 13 trustee, the due date and amount of each missed payment, and the current status of payments to the trustee; and
- (E) If relevant to the motion, the movant's estimate of the current market value of the property and whether any equity exists in the property.

(b) *Objections.* An objection filed by the debtor to a motion brought pursuant to subsection (a) of this Local Rule challenging the moving party's allegation of missed payments must attach proof that payments have been made or an Affidavit that those payments have been made.

(c) *Motions also requesting abandonment.* Motions for relief from the automatic stay that include a request for abandonment must also comply with Local Rule 6007's service requirement.

(d) *Fourteen Day Notice Period Required.* Any party that files a motion for relief from the automatic stay must provide notice as required by Local Rule 9014(a). The movant must file the notice and provide exactly 14 days after service of the notice to object. Movant is prohibited from providing a longer notice period.

(e) *Ceasing Payment on Claims.* When an order terminating the automatic stay is entered, the trustee is authorized to cease payments upon the movant's claims related to the property that is the subject of the motion.

(f) *Supplemental claims*

PROPOSED REVISED LOCAL RULE 9013.1

LR 9013.1 Proof of Service

- (a) Every filing that is required to be served must be accompanied with or followed promptly by a certification of service that lists, for any non-CM/ECF service, the names and mailing address of the parties served and identifies the date and method of service for each served party and the identity of the person who effectuated service.
- (b) Anytime a party files a certificate or other document purporting to demonstrate service in a case, the proof of service must include, as an attachment, a copy of the relevant court-generated matrix for that case. The attached matrix must have been generated on the date that service was effected. To the extent that the party was required to serve some, but not all, parties in interest listed on the matrix, then the party may remove the names and addresses of parties in interest that were not served from the court-generated matrix but must otherwise leave the matrix intact. To the extent that the party was required to serve a party in interest in a manner other than the address listed on the court-generated matrix, then the party may note such service on the certificate of service.
- (c) Failure to comply with this Rule may constitute sufficient cause to deny the underlying motion or request without prejudice to its refiling.