

LOCAL RULES COMMITTEE MEETING

JUNE 2, 2022

TOPICS FOR DISCUSSION

I. CHAPTER 13 MODEL PLAN

1. Section 5.1 - Modify plan to address trustee's ability to pay excess funds pro rata to holders of non-priority unsecured claims.

- The model plan approved in May of 2021 took away the "not less than" language in Section 5.1:

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

The sum of \$_____.

_____% of the total amount of these claims, an estimated payment of \$_____.

If the estate of the debtor were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$_____. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

- An unintended consequence of this change is the inability to increase the percentage paid to unsecured creditors.
- Additional issue: if an under median debtor files a 60-month plan but prior to the mortgage arrears being paid in full, the stay is lifted and the claim comes out, the plan becomes 36 months by its terms. Then if all other claims (administrative, attorney fee, secured, priority unsecured) are paid and the plan has not yet reached 36 months, what does the trustee do with the plan payments?
- Suggestion: add language to 5.1 or elsewhere to allow an automatic increase in the amount paid to non-priority unsecured claims

Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid pro rata as follows:

- The funds remaining after disbursements have been made to all other creditors provided for in this plan.

- Eliminate trustee's filing of letters giving notice of increase in payments to general unsecured creditors.

2. Section 7.2 - Equal monthly payment arrearages: Clarify how missed plan payments may affect the order of distribution of a case.

- Plan provides for equal monthly payments to various creditors, and then debtor misses plan payments.

- Section 7.2 provides that equal monthly payments are made first but is silent if they are made up after a default or just if the payments simply resume.
- Should the secured creditor be paid the “make-up” amount before the debtor’s attorney is paid?

II. MOTIONS FOR RELIEF/SUPPLEMENTAL CLAIMS

1. **Deadline to amend claim post-surrender / stay relief:** Add a rule (or plan provision) giving creditors a specific amount of time to amend a proof of claim to provide for a non-priority unsecured balance when the collateral is surrendered under the plan, or the stay is lifted allowing for the sale of the collateral.
2. **Deadline to file supplemental claim:** In orders resolving relief from stay motions, set a deadline for the supplemental claim to be filed
 - 90 days (assuming the plan has more than 90 days remaining)?
3. **Supplemental claims left behind when the main claim is transferred:** Transfer of Claims (See FRBP 3001(e)). Often filed by mortgage servicers as they transfer around the debt, the TOC will be filed for the original pre-petition claim, but no TOC is filed for the separate supplemental claim(s). The trustees either then send some payments to the new servicer and some to the old or spend time tracking down the mortgage servicers to get them to file the additional TOC for the supplemental claims. If the trustee is not successful, it may lead to sending money to unclaimed funds.
 - Local rule that allows a notice (or motion if necessary) to be filed by the trustee stating X claim was transferred as evidenced by TOC. Y and Z claims are supplemental and related to X and trustee believes the transfer should apply to them as well. Served on mortgage servicer, negative notice and if no response an order stating the TOC filed on X claim applies to claim Y and Z as well.
 - Supplemental claim rule that requires supplemental claims to be associated with the “primary” claim and then all associated claims would follow any assignment of the “primary” claim?
4. **Supplemental claims for attorney’s fees and PPFNs for the same attorneys’ fees**
 - Has this been adequately addressed by the new model plan form language?

III. MISCELLANEOUS TOPICS

1. **Require debtors to provide email address:** Add a rule requiring debtors to provide the court and trustee with their email address. Purpose would be:
 - The court could use the information to nudge debtors into debtor electronic noticing
 - Debtors could be enrolled in the NDC
 - As 341s transition to Zoom hearings, debtor’s email address could be used to send a Zoom link
 - Help find debtors who have moved and are owed funds after dismissal, conversion, or completion. Currently, paper refund checks are often returned, and funds are sent to the court.

2. **The Uniform Procedure for Doomsday Orders**
 - Any need for modification or improvement?

3. **Trustee 2004 procedure**
 - Any need for modification or improvement?

4. **Ways to improve confirmation process?**

5. **Ways to further streamline or expedite hearings ultimately not involving a matter requiring the court to resolve?**

6. **Would addition of an endorsed-order CM/ECF event be useful?**
 - Would allow multiple parties to indicate electronically their consent to the proposed order.
 - This modification creates two new events which allow filers to endorse proposed orders. One event will be used by the Trustee/UST, the other event will be used by all other filers.
 - Once the endorsement is docketed, an “endorsed” badge will appear for the order on the Order Activity Report. Hovering the mouse cursor over the badge shows additional information such as the filer and date filed.

IV. LIST OF IDEAS FOR NEXT REVISION OF LOCAL RULES

1. **LR 1002.1 – Electronically Filed Cases: Debtor to Maintain Paper Copies -** requires debtors who file electronically to bring paper copies of the petition and schedules to the 341
 - Delete - not required to bring paper to Zoom 341s

- Amend to make production of original signatures upon the request of trustee or UST
2. **LR 1002 – Petitions Filed Using Non-Electronic Means**
 - Should we consider allowing pro se debtors to continue to file petitions electronically?
 - Add provisions for pro se electronic filing to LR 1002.1?
 3. **Rule 1004.1 - New local rule – POAs, guardians, and next friends**
 - Rule regarding bankruptcy filings initiated by power of attorney
 - Rule regarding bankruptcy filings on behalf of incapacitated debtors/minors and process to be followed to file the bankruptcy case.
 4. **LR 1007.2 – Disclosure of Other Documents** - revise to account for the situation where the debtor files his case in the early part of the year and the tax returns for the preceding year are not yet due. *See In re French*, 354 B.R. 258 (Bankr. E.D. Wis. 2006) and *In re Long*, 19-20186-gmh (Bankr. E.D. Wis. 2019)
 - Rework rule to require latest 2 years of tax returns
 - Require debtor to provide trustee with copies of returns filed post-petition and not required by sec. 1308 within X days (7 days?) of filing with the taxing authorities
 5. **LR 1009 – Amended schedules:** duties when adding creditors or amending budget schedules
 - If amending schedules D, E or F or the list of creditors, a supplemental master list shall be filed, listing only the new creditors.
 - Unless the court orders otherwise, a debtor filing an amended schedule I or J must file both schedules I and J that evidence the debtor’s then-current income and expenses.
 6. **LR 1015 – Administration of Joint Estates**
 - If two or more cases to be filed in this district at the same time are related, the attorney filing the cases must file a Certification of Relatedness in substantially the form posted on the court’s web site.
 - If a case to be filed in this district is related to a case previously filed in this district, the attorney filing the case must file a Certification of Relatedness in substantially the form posted on the court’s web site.
 - If the Certification of Relatedness shows that the cases are related, the clerk must directly assign the related cases to the same judge.

7. LR 2002.1 – Bankruptcy Petition Preparers

- Add bankruptcy petition preparer provisions from the website
- What is the appropriate dollar limit a BPP can charge? Currently \$75

8. LR 2002.2 – Deadline to Object to Chapter 13 Plan

- Change rule to provide that the court may extend the deadline, as happens under the new 2004 procedure
- “Unless the court otherwise orders . . . ”

9. LR 2004 – Rule 2004 Examinations – any need for modification or procedure?

- No order necessary to authorize examination or to require production of documents versus motion be filed on 14 days’ notice and require order to authorize examination or to require production of documents?
- 14 days’ notice of examination calculated from date of service of motion – use negative notice procedure of 9014?
- Meet and confer requirement before filing motion?
- If approved, attendance must be compelled by subpoena
- Objections in form of protective order under FRCP 26(c)/FRBP 7026 must be filed within 14 days of service or before the examination is convened whichever is earlier
- Motion for protective order operates as a stay of the order for examination until the court acts on the motion

10. LR 2014 – Applications for Employment

- Unless otherwise ordered, effective as of the date it is filed?

11. LR 2016 – Applications for Compensation for Services Rendered and Reimbursement of Expenses – changes to proposed order to disaggregate fees and expenses and require back-up for certain requests

- amend to require the proposed order to break out attorney’s fees separately from costs as required by Rule 2013.
- add subsection stating that if someone is filing a request for approval of administrative expenses not otherwise governed by these rules, they must file backup support (invoices, etc.)
- change (a)(2) to clarify or alter the chronological record of time to be for all timekeepers together, rather than timekeeper by timekeeper.
- add provision that terminates the employment upon adjudication of final fee application or leave for form order?

12. LR 2070 – Chapter 7 Trustee Expenditures - amend to replace the Court’s General Order 11-1, dated July 18, 2011

- Current Local Rule 2070(a) lists certain chapter 7 trustee expenses that may be incurred and paid without notice or court order, which include “(a)(6) bank fees for obtaining copies of bank documents.” The qualifying expenses listed in the 2010 Local Rules are identical to the list in the current Local Rules.
- General Order 11-1, dated July 18, 2011, states: “Panel trustees . . . are authorized to incur and pay any actual, necessary expenses (as contemplated by 11 U.S.C. §330) for bank fees and charges directly related to the administration of estate accounts...” It’s not clear what the motivation for the order was, but it could be that the trustees wanted the court to make this change to include another expense. But because the 2010 Local Rules had just been adopted the previous year, the simplest way to do it was by a standing order.

13. LR 3015 – Chapter 13 Plans

- Pre-confirmation plan amendment
 - Require filing of entire plan form?
 - Would require deleting/amending sub (1) and (2) of LR 3015
 - Changed sections to be highlighted or marked in some way?
 - Alternative: revise amendment form to require reproduction of superseded portion of plan.

14. LR 4001.1 Motions for Relief from Stay – require service at 14 days; addressing surrender

- **require** creditors to send motions for relief from the automatic stay out on 14 days’ notice and prohibit a longer notice provision.
 - Plus 3 days for mailing?
- If the debtor has indicated an intent to surrender the real property in the chapter 13 plan or the debtor’s statement of intention, the movant is not required to file the Affidavit required by Local Rule 4001.1(a)(4), even if there is also an alleged payment default, if the motion correctly identifies the basis for surrender.

15. LR 5005 – Electronic Filing - clarify text-searchable requirement

- Expand the definition of pleadings to make it clear that everything must be filed in text searchable PDFs.

- Exception for documents not originally created by the filer and unavailable in searchable format.

16. LR 5005.1 – Retention of Electronically Filed Documents

- Abandon this rule for everything except petitions, schedules, and amended schedules?
- Docu-Sign is permissible?

17. LR 9004 – Form of Documents - page limit

- Currently states page limit of 15 pages or 6,500 words
- Delete

18. LR 9010 – Withdrawal and Substitution of Attorneys of Record

- Modify rule to make it clearer and ease administration
- New provision to address payment to debtors' attorney when debtor hires new attorney in the middle of the case (i.e. who does trustee pay)?
 - Example: unless otherwise provided in an agreement/stipulation, the chapter 12/13 trustee will continue to pay remaining attorneys' fees to the law firm where the case originated.
- Notice on the docket or to the trustees when a change is made for a user in CM/ECF, specifically attorney name, firm name, address, phone number and email address

19. LR 9013 – Form of Motions, Notices, and Orders

- Rule currently states just motions must state a legal basis
- Revise to state that objections must also state legal basis
- Add that failure to respond to a motion is sufficient grounds to grant the motion.
- Debtor must respond to an objection to exemptions
 - Objections to exemptions on negative notice?
- New procedure for having motions heard on an expedited basis?

20. LR 9013.1 – Proof of Service - Require attachment of mailing matrix when certifying service

- It is much more difficult to determine if proper service has been accomplished if an alternate table has been used.
- Proposal: 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. The listing of an address for a party in interest on the court-generated matrix does not guarantee proper service under all circumstances. Failure to comply with this Rule may constitute sufficient cause to deny the underlying motion or request without prejudice to its refiling.

21. LR 9013.2 – Motions to continue/impose stay

- Require affidavit or declaration must be submitted with the motion?
- Within 7 days of the motion being filed?
- Trustee telephone appearances are permitted for these hearings if not questioning witnesses or introducing any evidence

22. LR 9014 – Notice of Motion, Notice of Hearing, Time Periods for Objections; Form of Objections

- Identify motions that can be filed without notice?
 - Motions to extend time to file schedules/plan
 - Motions to shorten or limit notice
 - Motions to reopen filed less than 30? or 60? days after case has been closed
 - Others?

23. LR 9014.1 – Proposed Orders

- Proposed order to be filed within 5 days of expiration of objection period
- Unopposed motion not considered under advisement by the court until the date the order is filed
- Movant must file a proposed order within 7 days from the adjudication of a motion at a hearing unless the court orders otherwise
- Consequences for failure to file order?
- Court may hold order for 7 days
- Proposed orders must be submitted as a separate document with the drafter's name, address, telephone number, and email address appearing single spaced in the lower left hand corner of the first page

24. LR 9037 – Privacy Protections for Filings Made with the Court

- Motions to redact– clarify procedures given number of issues with motions to redact and failures to follow Rule 9037(h) and local forms
- Documents filed under seal
 - Consider rule on motions for protective order (and require use of court form)
 - Require sufficient facts and good cause to support need for protective order
 - Protective order template based on District Court template?
 - Challenges to confidentiality designations by motion
 - Meet and confer requirement before such motions can be filed

ADVERSARY PROCEEDINGS

25. LR 7016 – Pretrial Procedures

- Apply Fed. R. Civ. P. 16(b) to adversary proceedings?

26. LR 7026 – Duty to Disclose; General Provisions Governing Discovery

- Require Rule 26 mandatory disclosures in adversary proceedings
 - 26(a)(1) (mandatory disclosure)
 - 26(a)(2)(B) (disclosure regarding expert reports)
 - 26(a)(3) (additional pretrial disclosures)
 - 26(d)(1) (timing)
 - 26(d)(2) (early Rule 34 requests)
 - 26(f) (mandatory meeting before scheduling conference / discovery plan)

27. LR 7041 – Notice Requirements for Dismissal of Proceeding to Deny or Revoke Discharge

- resolve inconsistencies in rule – subsection (a) seems to require a hearing, but not subsection (c)

28. Local Rule on default judgment procedures?

CHAPTER 11

29. Chapter 11 proof of claim deadline

- New LR - Set a proof of claim deadline in chapter 11 cases? 70 days?

30. LR 3017 - Chapter 11 Disclosure Statements:

- Delete – Court currently drafts this order and does not include this disclaimer

Notice of Hearing and Disclaimer. The proponent of a plan must give notice of the hearing to consider approval of the disclosure statement. The notice must include the following statement in boldface type:

THIS NOTICE DOES NOT CONSTITUTE A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN. ACCEPTANCES MAY NOT BE SOLICITED UNLESS AND UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE COURT.

Required Statement. After approval by the court, the disclosure statement or a separate notice must conspicuously state the following:

THIS DISCLOSURE STATEMENT HAS BEEN DETERMINED BY THE COURT TO CONTAIN ADEQUATE INFORMATION AS REQUIRED BY SECTION 1125 OF THE BANKRUPTCY CODE. THIS DETERMINATION DOES NOT CONSTITUTE RECOMMENDATION OR APPROVAL OF THE PLAN.

31. LR 4004(c) – Disclosures Required Before Discharge

- Does not comply with 28 U.S.C. § 1930
- Delete?