

LOCAL RULES COMMITTEE MEETING

JUNE 20, 2023

AGENDA

1. Proposed LR 5005.1: Original signatures and retention of documents

- Review proposed draft combining Local Rules 5005, 5005.1, 1002, 1002.1, 1008.

2. LR 9010: Withdrawal and substitution of attorneys of record

- Clarify procedure in 3 common “**substitution**” situations for (1) debtor’s counsel, (2) counsel representing a party in a pending adversary proceeding, and (3) counsel representing a party in a pending contested matter:
 - The client agreed to be represented by a law firm, not a specific lawyer, and the only attorney identified on the docket as counsel of record leaves the firm (LR 9010(a)(3));
 - The client has hired a new lawyer to replace the attorney listed as counsel of record (LR 9010(a)(2)); and
 - The attorney listed as counsel of record has changed firms and continues to represent the client (LR 9010(a)(4)).
- Clarify procedure for (1) debtor’s counsel, (2) counsel representing a party in a pending adversary proceeding, and (3) counsel representing a party in a pending contested matter when the attorney seeks to **withdraw** from representing the client (LR 9010(a)(1)).
- Discuss updating forms posted to the website so they are consistent with rule.

3. LR 1009: Notice to added creditors

- Require a debtor amending Schedule D or Schedule E/F to add creditors to file a supplement listing the names and addresses of those creditors?
 - The debtor would still be required to add the information to the matrix in the current manner.
 - The purpose of this addition to the rule would be to permit the court, chapter 13 trustees, and chapter 12 trustee to determine whether a filer has complied with current Local Rule 1009 (requiring service of a notice of commencement of case and a copy of the plan on any added creditor).
- Review proposed revision requiring a debtor to file both an amended Schedule I *and* Schedule J if the debtor amends either form.

4. Discussion of whether to draft a rule limiting the amount non-attorney bankruptcy petition preparers can charge.

- The court's website is currently the only authority for a \$75 limitation on the amount the court permits non-attorney bankruptcy petition preparers to charge for their services.
- Should this limitation be moved to a local rule?

5. LR 9014.1: Proposed orders

- Require proposed order to be filed within 7 days of expiration of objection period or 14 days after adjudication of motion at a hearing?

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

7. Additional comments, questions, or concerns

PROPOSED LOCAL RULE 5005.1

(drafted by Laura Steele)

- (a) Electronic filing. 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.
- (1) *By a represented individual or entity.* 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.
 - (2) *By a self-represented individual.* Using the Electronic Document Submission System (“EDSS”). A self-represented individual may file documents (other than proofs of claim) electronically using the EDSS. Persons filing with EDSS must comply with the EDSS Administrative Procedures available on the Court’s website: <https://www.wieb.uscourts.gov/edss-administrative-procedures>. Proofs of claim may be filed electronically as instructed on the Court’s web site: <https://www.wieb.uscourts.gov/file-claim-electronically>
- (b) 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:
- a. for Non-Filing Users (defined as an unrepresented individual without a CM/ECF username and password):
 - i. a wet ink signature, with a printed or typed name provided below; or
 - ii. 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 corresponding unique IP address and or PIN, and ensures that the signature is authentic and has not been altered or repudiated, with a printed or typed name included or provided below;
 - b. for Filing Users (defined as an attorney or attorney staff member with a CM/ECF username and password), in addition to the provisions of Fed. R Bankr. P. 5005(a)(2)(C):
 - i. 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

ii. any of the signature forms listed in subsection (b)(a).

(c) Original Signature of Non-Filing User Required. Papers that require an original signature from a Non-Filing User include:

- a. 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);
- b. 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
- c. 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.

(d) 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 (f).

(e) Certification.

- a. 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:
 - i. all parties indicated to have signed the paper have executed original signatures under one of the approved methods described in subsection (b)(a);
 - ii. 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 (f); and

iii. the Filing User has authorized the electronic filing of the signed paper.

(f) Retention.

a. Retention of Original Signatures.

- i. 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 five years after the closing of the case or proceeding in which the paper is filed.
- ii. Digital Signatures. In the case of an electronically filed paper containing a digital signature, 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 five years after the closing of the case or proceeding in which the paper is filed.
- iii. 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 five years after the closing of the case or proceeding in which the paper is filed:
 1. for a non-Filing User, the paper containing the original signature; and
 2. for another Filing User, the written authorization to affix that other Filing User's printed or typed signature on the paper.
- iv. 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.
- v. 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 (f)(a).

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.

CURRENT LOCAL RULE 9010

LR 9010 Withdrawal and Substitution of Attorneys of Record

- (a) Withdrawal or substitution of counsel of record for a debtor or for a party in a contested matter or adversary proceeding requires leave of court obtained in one of the following ways.
- (1) *Withdrawal in the absence of successor counsel.* An attorney who seeks to withdraw during the pendency of the case, matter, or proceeding must file a motion to withdraw. Unless provided otherwise by this Local Rule, the attorney must serve the party, any adverse parties in the matter or proceeding, the trustee, and the United States trustee with 14 days' notice of the motion.
 - (2) *Substitution of counsel.* A debtor or party may obtain leave to substitute counsel as follows:
 - (A) If the party, the party's currently appearing attorney, and successor attorney all agree that the succeeding attorney may appear in place of the party's current counsel, the substitution may be accomplished by filing a stipulation of substitution signed by the party, the current attorney, and the successor counsel. The party, through either current or succeeding counsel, must move the court for approval of the substitution; or
 - (B) The successor attorney may file a motion to substitute counsel served on the current counsel, the trustee, and the United States trustee.
 - (3) *Continued representation by law firm.* If a party agreed to be represented by the attorneys of a law firm rather than a particular attorney at that firm and an attorney the Clerk has identified as attorney of record leaves the firm, an attorney at the firm must move to be substituted as counsel of record, if the firm intends to continue representing the party. The attorney filing the substitution motion must certify that the attorney has notified the client, the client has not objected, or the client has consented to the continued representation. The attorney must serve the motion on the party, the trustee, and the United States trustee.
 - (4) *Continued representation by attorney who changes law firms.* If counsel of record for a party changes law firms during the pendency of a matter and other attorneys for the firm have appeared for the party in the matter, attorneys at counsel's former firm must move to withdraw. The attorney filing the substitution motion must certify that the party has consented to continued

representation by the attorney of record. The attorney filing the motion must serve the party's counsel of record, the party, the trustee, and the United States trustee.

- (b) *Substitution of counsel for other parties.* Other parties who have appeared through counsel and desire to change their counsel of record may do so by filing a notice of substitution of counsel. The notice may be filed by successor counsel but must be served on the party's counsel of record. The notice must describe the circumstances of the substitution and represent that the party has authorized the substitution. Unless the court otherwise orders, the notice is effective when filed.
- (c) *Multiple case substitution.* Multiple cases may be combined in the same motion and proposed order for substitution of counsel, but only if the cases are assigned to the same judge. If the substitution is to take place in cases assigned to more than one judge, separate motions and proposed orders are required for each judge. This Local Rule's notice, certification, and consent requirements apply to every client named.
- (d) *Effect of substitution order.* Any order substituting for an attorney of record or terminating a counsel of record takes effect when the order is entered, unless the order otherwise provides.

PROPOSED REVISED LOCAL RULE 1009

LR 1009 Notice to Added Creditors

(a) The debtor must serve a notice of commencement of case and a copy of the Chapter 11, 12, or 13 plan, if any, on any new creditor added by an amendment. The debtor also must file proof of such service.

(b) Any debtor filing an amended schedule I must simultaneously file an amended schedule J unless the court specifically authorizes otherwise. Any debtor filing an amended schedule J must also file an amended schedule I at the same time unless the court authorizes otherwise.

Notice of Fee Cap for Petition Preparers, Effective January 1, 2012

Effective January 1, 2012, the presumptively reasonable fee that a bankruptcy petition preparer in the Eastern District of Wisconsin is allowed to charge or collect will be capped at \$75 per case. The \$75 fee includes all services provided by a non-attorney for assisting a debtor in preparing the petition, schedules, statements, applications and other required documents for a bankruptcy case.

If a bankruptcy petition preparer believes that the value of his or her services in a particular case exceeds \$75, that bankruptcy petition preparer will be required to file, along with the Disclosure of Compensation of Bankruptcy Petition Preparer (Form B280), an affidavit or declaration under penalty of perjury, explaining why the preparer believes that the services in that case were worth more than \$75. The court will review that affidavit or declaration, and determine whether to allow a fee in excess of \$75.

Any bankruptcy petition preparer who, without obtaining court approval, charges or collects a fee in excess of \$75 will be required to refund the excess to the debtor. If the petition preparer does not refund the excess fee to the debtor, the petition preparer will face additional sanctions.

For more information and additional regulations concerning bankruptcy petition preparers, see Title 11 U.S.C. § 110.

<https://www.wieb.uscourts.gov/news/notice-fee-cap-petition-preparers-effective-january-1-2012>
(last accessed June 16, 2023).

PROPOSED REVISED LOCAL RULE 9014.1

LR 9014.1 Proposed Orders; 7-Day Rule

~~The court may hold proposed orders arising from a contested hearing for 7 days from the date that the proposed order is filed to allow for comments or objections to the form of the order. The court generally will hold orders for this period unless the parties agree on the form of the order, the court is reasonably confident that the order conforms to relief it directed at the hearing, or it concludes that other considerations warrant prompt entry of the order.~~

- (a) If no objection or other response is filed to a motion or other request after providing notice in accordance with the Federal Rules of Bankruptcy Procedure and these Local Rules, the movant must file a proposed order within 7 days of the expiration of the objection period. The motion or other request that is unopposed will not be deemed under advisement by the court until the date on which the movant files a proposed order.
- (b) The movant must file a proposed order within 14 days from the adjudication of the motion at a hearing, unless the court orders otherwise. If a proposed order is not submitted within 14 days from the adjudication of the motion, the court may prepare and enter such an order as it deems appropriate, including an order directing the movant or prevailing party to appear before the court and show cause why the motion or other request for relief should not be denied, disapproved, or overruled, as the case may be, for failure to prosecute.
- (c) The court may hold proposed orders arising from a contested hearing for 7 days from the date that the proposed order is filed to allow for comments or objections to the form of the order. The court generally will hold orders for this period unless the parties agree on the form of the order, the court is reasonably confident that the order conforms to relief it directed at the hearing, or it concludes that other considerations warrant prompt entry of the order.
- (d) Proposed orders must be submitted in editable PDF format and be directly converted from the filer's word processing software, not scanned.
- (e) Each proposed order must be submitted as a separate document. The drafter's name, address, telephone number, and email address must appear single-spaced in the lower left-hand corner of the first page.