

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**PROPOSED AMENDMENTS TO
LOCAL RULES:
PUBLIC COMMENT PERIOD**

The Court is proposing various amendments to its local rules. The changes primarily update references to the national forms, but also include a few 'housekeeping' edits to match the rules to actual practice. A few substantive changes are also proposed, particularly as to notice after confirmation in Chapter 13 cases and a briefing requirement for certain types of motions to dismiss adversary proceedings.

The proposals are attached. The Local Rules Advisory Committee has reviewed the proposals and made suggestions, which resulted in some edits to the original proposals. The Judges reserve the right to make additional changes before the target effective date of December 1st.

Comments to the proposed rule can be made by sending an email to Local_Rules_Comments@insb.uscourts.gov. Deadline for comments is Tuesday, November 25, 2015.

November 3, 2015

/s/ Kevin P. Dempsey
Clerk

LOCAL RULES AMENDMENTS – DECEMBER 2015

B-1002-1. FILING REQUIREMENTS TO COMMENCE A VOLUNTARY CASE

(b) Emergency Filing; Minimum Required

Any voluntary petition filed without the lists, schedules, statements and other documents required by Fed.R.Bankr.P. 1007 and 11 U.S.C. §521 must be accompanied by:

- (1) if the Debtor is an individual, Exhibit D (Official Form ~~B4D~~ 101) with a certificate of counseling from the course provider or, if the certificate is not filed, Exhibit D (Official Form ~~B4D~~ 101) and, if applicable, a motion seeking a deferral or waiver of the credit counseling requirement pursuant to 11 U.S.C. §109(h);
- (2) if the Debtor is an individual, a Statement of Social Security Number (Official Form ~~B24~~ 121);
- (3) the appropriate filing fee, an Application to Pay Filing Fee in Installments (Official Form ~~B3A~~ 103A) or, if a Chapter 7, an application requesting waiver of the filing fee (Official Form ~~B3B~~ 103B);
- (4) Uploaded creditor information necessary to provide proper notice to all scheduled creditors or, if filed non-electronically, the CD or diskette required by S.D.Ind. B-1007-1(b); and
- (5) in a Chapter 11 case, the list of the twenty largest unsecured creditors and a list of creditors who have or claim to have a secured claim.

Comments

References to official forms updated to reflect new numbering.

B-1006-1. PAYMENT OF FILING FEE IN INSTALLMENTS

(a) Application Form

The application shall substantially conform to Official Form ~~B3A~~ 103A.

Comments

Reference to official form updated to reflect new numbering.

B-1007-1. LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS

(a) Additional Requirements

- (5) file pay advices as required by 11 U.S.C. § 521(a)(1)(B)(iv); file a certification under penalty of perjury that the debtor has not been employed by any employer within the 60 days before filing of the petition; or file a certification that the debtor's employer does not issue pay advices and the debtor has no other evidence of payment received within the 60 days before filing. Filers shall redact all but the last four numbers of any social security number that appears on the pay advices or other documents submitted.

Comments

This edit is proposed to clarify the need to file a certification in lieu of pay advices when the debtor has no employment in the 60 days before filing or the employer does not provide pay advices or other evidence of payment.

B-1007-2. NOTICING, BALLOTING AND CLAIMS AGENTS

(c) Claims Agent

(2) Mailing of Proof of Claim Forms and Notice of Bar Date

Proofs of Claim with a notice of bar date should be mailed by the Claims Agent and should reflect the scheduled amount of the creditor's claim. Unless alterations are approved by the Court, after notice to any committee and the UST, the forms shall comply substantially with Official Forms ~~B-10~~ 410, 410A, 410S1 and 410S2. The forms will instruct claimants to send claims to the Claims Agent and not the Court.

Comments

Reference to official form updated to reflect new forms and new numbering.

B-1009-1. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES, AND STATEMENTS OF FINANCIAL AFFAIRS

(c) Amendments to Social Security Number or Individual Taxpayer Identification Number: Notice Requirements

If a SSN or ITIN is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect SSN or ITIN, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

- (1) If the SSN or ITIN on any Statement of Social Security Number (Official Form ~~B21~~ 121) is incorrect, the Debtor shall submit an amended statement to the Clerk.

Comments

Reference to official form updated to reflect new numbering.

B-1015-1. CONSOLIDATION OR JOINT ADMINISTRATION OF CASES PENDING IN SAME COURT

(b) Manner of Joint Administration

(5) Documents to be Filed in Member Cases Separately

Even if filed after the entry of the order for joint administration, the following documents shall be filed on the dockets of the Member Case as to which the document applies, and the caption of these documents shall have the name and case number of the Member Case:

- (A) schedules, statements of financial affairs, and amendments thereto;
- (B) in Chapter 11 cases, plans and disclosure statements and objections or other pleadings related thereto, and ballot reports;
- (C) trustee final reports and accounts and related notices;
- (D) motions to dismiss.

Comments

This edit is proposed to clarify that motions to dismiss a member case should be filed in the member case.

B-1016-1 NOTICE OF DEBTOR'S DEATH

The attorney for the debtor shall file a notice of the debtor's death in the bankruptcy case as soon as possible after verifying that the debtor is deceased.

Comments

This edit is proposed to clarify the process for informing the Court of death of a debtor.

B-1017-1. CONVERSION AND DISMISSAL

- (b) Dismissal for Failure to File Required Documents or Pay Filing Fee
- (2) The Court shall also enter an order of dismissal without further notice or hearing unless the documents required by Fed.R.Bankr.P. 1007(b)(3) (credit counseling documentation or request for waiver under 11 U.S.C. §109(h)(4)) and by Fed.R.Bankr.P. 1007(f) (SSN statement, Official Form ~~B21~~ 121) are filed with the voluntary petition or within seven (7) days thereafter.

Comments

Reference to official form updated to reflect new numbering.

B-2002-1. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, AND UNITED STATES TRUSTEE

- (d) Limited Notice in Chapter 13 Cases

In Chapter 13 cases, after the entry of a confirmation order all notices required by Fed.R.Bankr.P. 2002(a) shall be mailed only to the Debtor, the trustee, the UST, creditors who have filed claims and creditors, if any, who are still permitted to file claims by reason of an extension granted under Fed.R.Bankr.P. 3002(c)(1) or (2).
- (~~d~~e) Authorization for Chapter 13 Trustee to Recover Noticing Costs from Estate

(ef) Notice of Final Report with Notice of Applications for Compensation

(fg) Returned and Undeliverable Mail

Comments

This proposed new subparagraph would limit notice in Chapter 13 cases after confirmation of the plan. The rule will be particularly beneficial as to notices of proposed plan modifications, since the cost of such noticing is borne by the Chapter 13 trustee or by debtors' counsel.

B-2014-1. EMPLOYMENT OF PROFESSIONAL PERSONS AND TREATMENT OF RETAINERS IN CHAPTER 11 CASES

(b) Employment Applications in Chapter 11 Cases

(3) Disclosure of Compensation and Retainers

As part of the Employment Application, a Debtor and a proposed Professional shall obtain approval from the Court of an arrangement whereby a retainer paid by the Debtor to the Professional may be retained and applied to the satisfaction of such Professional's fees and expenses. Those financial arrangements may include provisions similar to the following:

- (A) The retainer shall be applied to satisfy the Professional's fees and expenses as they are approved by the Court pursuant to 11 U.S.C. §§330 and 331;
- (B) The Professional may hold the entire retainer without any application for payment of fees and expenses until final approval by the Court of such Professional's final application for fees and expenses, with such allowed interim fees and expenses paid periodically from other estate assets;
- (C) Pursuant to subparagraph (b)(4) of this rule, the Professional may draw against the retainer at specified intervals prior to the award of fees and expenses by the Court; and
- (D) Any other arrangement approved by the Court.

(4) Periodic Payment Procedure for Periodic Payment from Retainer

Subject to prior Court approval, the Professional and the Debtor may agree to a streamlined procedure for periodic payment of fees and costs **from any retainer**, prior to allowance by the Court. "Payment" includes any transfer of funds from the Debtor to the Professional after the filing date. Any proposed procedure shall provide for payment of no more than 80% of requested fees but may provide for payment of 100% of expenses.

- (A) All such arrangements shall provide that prior to the fee draw the Professional must file with the Clerk a Notice of Draw which sets forth the amount of the proposed draw and contains, as an attachment, a copy of the periodic billing which supports the amount of the draw.
- (B) A copy of the Notice of Draw shall be distributed to the Service List and, in addition, a copy of the relevant periodic billing shall be delivered to the UST. Failure of a party to object to the draw does not affect the party's right to object to the final allowance of fees and expenses. Court approval of the draw procedure is not approval of fees and expenses. All fees and expenses drawn are subject to disgorgement until the Court allows the final fee application of the Professional.

(5) Other Periodic Payment Procedure

The Court may approve procedures for periodic payment, other than from a retainer, upon separate application and notice.

Comments

When subparagraphs (3) and (4) were originally introduced, the concept of periodic payment was limited to draws on a retainer. Over time, parties have requested – and the courts have approved – periodic payment procedures not from a retainer and other than as provided by 11 U.S.C. §331. Because these arrangements result in payments from the debtor, and not from a retainer held by the professional, the court is requiring that requests for such procedures be filed separately from any application to employ.

B-3001-1. PROOF OF CLAIM

(a) Method of Filing

A Proof of Claim ~~may be filed non-electronically or electronically~~ and shall substantially conform to Official Forms ~~B-10~~ **410, 410A, 410S1 and 410S2** and available on the Court's website. ~~Entities which are~~ **Registered users of CM/ECF shall file claims electronically. Entities which are not authorized or required to file documents electronically may file claims either on paper or by using the**

Court's electronic proof of claim option ("ePoc/eWoc"), found on the Court's website.

Comments

Reference to official form updated to reflect new forms and new numbering. Other edits are intended to eliminate confusion as to filing method allowed.

B-4002-1. DEBTOR'S DUTIES

(a) Notice to Other Tribunals

~~Immediately upon the entry of an order for relief, the Debtor shall give written notice to any Court or tribunal where an action is pending against the Debtor and to the parties and counsel involved in that action. If an action is commenced subsequent to the date of the order for relief, the Debtor shall give similar written notice to the Court or tribunal and to all parties and counsel involved.~~

(1) Notice in Matters Pending at Time Bankruptcy Case Filed

Upon the entry of an order for relief in the bankruptcy case, the Debtor shall file written notice in any action in which the Debtor is a party that is pending in another tribunal. That notice shall contain:

- (i) the caption and case number of the non-bankruptcy action;
- (ii) the name and case number of the bankruptcy case; and
- (iii) the name and contact information of any attorney for the debtor in the bankruptcy case, if other than the attorney filing the notice.

(2) Notice in Matters Commenced After Bankruptcy Case Filing

If an action is commenced subsequent to the date of the order for relief, the Debtor shall file a written notice with that tribunal that contains the information required in subparagraph (a)(1) of this rule.

(3) Notice to Other Parties

The Debtor shall deliver a copy of the notice filed with the tribunal to the parties and counsel involved in that action.

(4) Sample Form Available

A sample notice is available on the Court's website at www.insb.uscourts.gov.

Comments

This edit is proposed to make clear that the proper way to give notice to a court or tribunal other than the bankruptcy court in which a matter involving the debtor is pending (or is filed) is to file a written notice with that court or tribunal. Listing the court as a creditor on the mailing matrix is insufficient.

B-4004-2. OBTAINING DISCHARGE AFTER CASE CLOSED WITHOUT DISCHARGE FOR FAILURE TO FILE FINANCIAL MANAGEMENT REPORT

A Debtor may file a motion to reopen a case in order to obtain a discharge after a Notice of No Discharge where the discharge was not entered solely because the Debtor failed to file a statement regarding completion of a course in personal financial management pursuant to Fed.R.Bankr.P. 1007(b)(7) and (c). In order for the motion to reopen to be granted, the Debtor must pay the fee due to reopen the case and, contemporaneously with the Motion to Reopen, file the required statement of completion using the appropriate Official Form ~~B23~~ 423.

Comments

Reference to official form updated to reflect new numbering.

B-4004-1. DISCHARGE IN CHAPTER 12 INDIVIDUAL AND CHAPTER 13 CASES

(a) Trustee's Notice of Completion

For all individual Chapter 12 cases and all Chapter 13 cases filed on or after October 17, 2005, the Chapter 12 or 13 trustee shall file a Notice of Plan Completion after all payments have been received. Sample forms are available on the Court's website.

(b) Debtor's Required Pleadings

Within thirty (30) days after the trustee files the notice of completion, the Debtor shall file a Motion for Entry of Discharge and a Certification of Eligibility for Discharge. Each Debtor in a joint case shall file a separate Certification. Sample forms are available on the Court's website.

(c) Service and Notice

The Debtor shall serve a copy of the Motion for Entry of Discharge and a Certification of Eligibility for Discharge on the trustee and any entity to whom the Debtor owes a domestic support obligation. The trustee shall have twenty-one

(21) days from the date of filing to object to the Motion or the Certification. If the Debtor owes a domestic support obligation, the Debtor shall distribute to the holder of that obligation a notice giving the holder twenty-one (21) days from the date of service to file an objection to the entry of discharge. A sample notice is available on the Court's website. The Debtor shall file a certificate of service as to the notice that complies with S.D.Ind. B-9013-2.

(d) Closing and Reopening

If no motion for entry of discharge is filed, the case may be closed without entry of a discharge after filing of the trustee's final report. If the motion for entry of discharge is filed after the case has been closed, the Debtor must also file a motion to reopen the case. A filing fee to reopen the case must be paid with the motion.

(e) Hardship Discharge

If the Debtor seeks a discharge pursuant to 11 U.S.C. §§1228(b) or 1328(b), then the Debtor shall file a Motion for Hardship Discharge and a Certification of Eligibility for Discharge. A sample Certification is available on the Court's website. The Debtor shall serve the Motion for Hardship Discharge and the Certification of Eligibility for Discharge as required by subparagraph (c).

Comments

The rule is edited to clarify the process for requesting a hardship discharge.

B-4008-1. REAFFIRMATION

(a) Official Bankruptcy Forms Required

Reaffirmation agreements shall be filed using the Administrative Office of the U.S. Courts Director's Procedural Forms for reaffirmation agreements (~~B240A~~ 2400A or ~~B240A/B Alt.~~ 2400A/B Alt.), as well as the cover sheet (Official Form ~~27~~ 427). Failure to use these required forms will result in a Notice of Deficient Filing and the Court will take no action on the reaffirmation agreement.

B-7001-1. ADVERSARY PROCEEDING COVER SHEET

(a) Cover Sheet Required

A party filing an adversary proceeding non-electronically shall also file a cover sheet using Official Form ~~104~~ 1040. Failure to provide the adversary proceeding cover sheet may result in dismissal of the complaint.

Comments

Reference to official form updated to reflect new numbering.

B-7007-1. MOTION PRACTICE IN ADVERSARY PROCEEDINGS

(a) Motions to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6)

(1) Movant's Obligations

If a party files a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), made applicable to bankruptcy matters by Fed.R.Bankr.P. 7012(b), then that motion shall be accompanied by a brief in support of the motion. Unless otherwise ordered by the Court, the supporting brief shall be no more than thirty-five (35) pages. In the alternative, the moving party may file a separate motion asking to be excused from the briefing requirement.

(2) Non-Movant's Obligations

The responding party shall have twenty-eight (28) days after the movant serves the motion and any brief to file and serve a response and a brief. The response and brief may be combined into one document. Unless otherwise ordered by the Court, the response brief shall be no more than thirty-five (35) pages. If the moving party has been excused from filing a brief, then the responding party may elect not to file a brief but shall state in the response that no brief will be filed. If no response is filed by the deadline, the court shall consider the motion to dismiss.

(3) Reply

If the responding party filed a response brief, the movant may file and serve a reply brief within fourteen (14) days after a response is served. Unless otherwise ordered by the Court, the reply brief shall be no more than twenty (20) pages.

(b) Motions to Dismiss Other Than Pursuant to Fed.R.Civ.P. 12(b)(6)

Unless the court orders otherwise, if a party files a motion to dismiss other than pursuant to Fed.R.Civ.P. 12(b)(6), then the responding party shall have twenty-eight (28) days after the movant serves the motion to file and serve a response. If no response is filed, the court shall consider the motion.

(c) Motions for Summary Judgment

Local Rule B-7056-1 sets the procedure for motions for summary judgment in

adversary proceedings.

Comments

This rule is intended to establish a procedure for motions to dismiss in adversary proceedings. Because the national uniform numbering system uses 7007-1 as the preferred number for motion practice in adversary proceedings, the proposal uses that number and then includes a cross reference to the separate procedure for motions for summary judgment contained in existing Local Rule B-7056-1.

B-9013-2. CERTIFICATE OF SERVICE

(a) Filing

All pleadings and documents filed in a bankruptcy case pursuant to Fed.R.Bankr.P. 9013 or 9014 shall comply with ~~Fed.R.Bankr.P. 7005(d)~~ **Fed.R.Civ.P. 5(d)(d)**.

Comments

The amendment fixes an incorrect reference to a national rule.