

REVISED LOCAL RULES: WHAT YOU NEED TO KNOW

Effective 2/1/13

❖ **Rule 2002-1(e): Bar Date**

- Environmental authorities listed in question 17 of the debtor's SOFAs must be served with the bar date notice.

❖ **Rule 2014-1(c): Professional Disclosure**

- Professionals employed pursuant to Local Rule 2014-1 must disclose their employment (or intended employment) of another professional for whom reimbursement will be requested under 2016-2(f).
- Disclosure may be excused by the Court if it would reveal privileged information or confidential litigation strategy.
- Even if disclosure is excused, the professional still must comply with Local Rule 2016-2(f) in order to be reimbursed for any payment made to the other professional.

❖ **Rule 2016-2(f): Reimbursement of Payments Made to Other Professionals**

- Professionals cannot seek reimbursement of payments made to another professional as an expense without providing the information required by Local Rule 2016-2(c), (d), and (e).
- May seek a waiver of this requirement pursuant to Local Rule 2016-2(h).

❖ **Rule 3002-1: Government Deadline to File Proof of Claim**

- Added a provision clarifying that the government is not required to file a proof of claim for postpetition taxes or fines/penalties related thereto as provided in § 503(b)(1)(D).
- Supersedes any provision in a plan of reorganization, motion, notice or court order stating otherwise.

❖ **Rule 3017-1(a): Hearing on Disclosure Statement**

- Hearing date must be at least 35 days following service of the disclosure statement.

- Objection deadline must be at least 28 days from service of the disclosure statement.
- ❖ **Rule 3022-1: Closing of Chapter 11 Cases**
 - Previously Local Rule 5009-1.
 - May move to close the case any time after plan has been “fully administered.”
 - Must file a separate proposed order closing each jointly administered or consolidated case.
- ❖ **Rule 4001-2(a)(i)(H): Provisions to be Highlighted in Financing Motions**
 - A new “provision to be highlighted” has been added.
 - Must highlight any provision in the proposed form of order and/or cash collateral stipulation or loan agreement that seeks to affect the Court’s power to consider the equities of the case under 11 U.S.C. § 552(b)(1).
- ❖ **Rule 4004-1: Automatic Extension of Time to File Complaint Objecting to Discharge in Event of Amendment**
 - If the 341 meeting is continued or rescheduled, the time to file a complaint objecting to discharge is the later of (a) the original deadline or (b) 30 days after the 341 meeting is concluded.
- ❖ **Rule 5005-2: Facsimile Documents and E-Mailed Documents**
 - Previous version of the Local Rules required the filing party to keep the original copy of any faxed document for at least 2 years from the closing of the bankruptcy case or proceeding in which the document was filed, unless otherwise ordered by the Court.
 - Now, only required to maintain the original copy of a faxed document for 2 days from the time the document appears on the docket.
 - The Local Rule also prohibits parties from sending documents to the Clerk’s office for filing via email, except as authorized by the Court.
- ❖ **Rule 5005-4: Electronic Filing**
 - No longer any provisions governing the retention of original copies of pleadings filed electronically.
- ❖ **Rule 5011-1: Motions for Withdrawal of Reference from Bankruptcy Court**

- Prior version of the Local Rules required movant to file concurrently with the filing of the motion for withdrawal of reference in the District Court a motion in the Bankruptcy Court for a determination of whether the matter or proceeding was core or non-core.
- Under the revised Local Rule, the motion filed in the Bankruptcy Court must now seek a determination as to whether the proceeding is one over which the Bankruptcy Court has the authority to enter final orders and judgments.
- ❖ **Rule 6004-1(b)(iv): Provisions to be Highlighted**
 - 6004-1(b)(iv)(N): Credit Bidding: The Sale Motion must now highlight any provision seeking to disallow or affect in any manner credit bidding.
 - Prior version only required the Sale Motion to highlight any provision seeking to *allow* credit bidding.
 - 6004-1(b)(iv)(O): Relief from Bankruptcy Rule 6004(h): This provision has been revised to reflect the 2009 amendments to the Bankruptcy Rules, which changed 10-day time periods to 14 days.
- ❖ **Rule 7007-4: Notice of Completion of Briefing or Certificate of No Objection, and Notice of Completion of Briefing Binder**
 - “Notice of Completion of Briefing” must now be filed and served no earlier than 7 days and no later than 14 days after completion of briefing.
 - The revised Local Rule also now specifies that the Notice of Completion of Briefing Binder should include the complaint and any answer.
- ❖ **Rule 7008-1: Statement in Pleadings Regarding Consent to Entry of Order or Judgment in Core Proceeding**
 - New Rule.
 - All complaints, counterclaims, cross-claims, and third-party complaints must contain a statement that the filing party does or does not consent to the Bankruptcy Court entering a final order in the event that it is determined that the Court does not have constitutional authority to do so absent consent of the parties.
 - Failure to include such a statement will waive the right to contest the Court’s authority to enter final judgments.
- ❖ **Rule 7012-1: Statement in Answer, Motion or Response Thereto Regarding Consent to Entry of Order or Judgment in Core Proceeding**
 - New Rule.

- Any answer, motion or response must contain a statement that the filing party does or does not consent to the Bankruptcy Court entering a final order in the event that it is determined that the Court does not have constitutional authority to do so absent consent of the parties.
 - Failure to include such a statement will waive the right to contest the Court's authority to enter final judgments.

❖ **Rule 7012-2: Extension of Time to Plead or File Motion**

- New Rule.
- The deadline to respond to a pleading in an adversary proceeding may be extended up to thirty (30) days by stipulation of the parties docketed with the Court or for a longer period of time by order of the Court.
 - A motion to extend the time to respond must be filed before the expiration of the response deadline.
 - Any extensions do not affect any other deadlines set forth in any Scheduling Order entered by the Court.

❖ **Rule 7016-2(d)(iii): Items to be Covered in a Pretrial Order**

- A new "item to be covered" has been added.
- Must cover whether the bankruptcy court has authority to enter final orders either due to the nature of the claims themselves or through the consent of the parties.

❖ **Rule 8006-1: Filing of Copies of Record on Appeal**

- Prior version of the Local Rule required the appellant and appellee to deliver the record on appeal to the Clerk's Office for transmission to the District Court.
- Under the revised Local Rule, the record on appeal shall be electronically transmitted to the District Court.
 - Now, parties shall file an index identifying by docket number those documents that would have been delivered to the Clerk's Office under the old rule. Any undocketed documents shall be filed along with the index and referenced in the index by hearing date and exhibit number.

❖ **Rule 9006-1(c)(i): Time for Service and Filing of Motion Papers**

- The time for service and filing of non-discovery-related motions has changed.
- Motions must now be filed and served 18 days prior to the hearing date.

- If service is by first-class mail, motions must be filed and served 21 days prior to the hearing date.
- If service is by overnight delivery, motions must be filed and served 19 days prior to the hearing date

❖ **Rule 9013-1: Motions**

- All motions, objections, and responses must contain a statement that the filing party does or does not consent to the Bankruptcy Court entering a final order in the event that it is determined that the Court does not have constitutional authority to do so absent consent of the parties.
 - Failure to include such a statement will waive the right to contest the Court's authority to enter final judgments.
- The revised Local Rule also specifies that the time period for CNOs must be computed according to Fed. R. Bankr. P. 9006(a)(2).

❖ **Rule 9018-1: Documents under Seal**

- Only a copy—and not an original—of any documents to be filed under seal shall be submitted to the Court. The documents must be clearly identified as “FILED COPY.”
- If a party intends to use a sealed document, a copy shall be provided to the Court in the hearing binder in an envelope and prominently marked “CHAMBERS COPY.”
 - After the hearing, the Court will destroy or return the Chambers Copy at the Court's discretion.

❖ **Rule 9019-2(f): Mediator and Arbitrator Compensation**

- The revised Local Rules delete the requirement that prior Court approval is required if the estate is to be charged in connection with a mediator's or arbitrator's compensation.

❖ **Rule 9019-5: Mediation**

- (a) Unless the Court orders otherwise, all adversary proceedings will be referred to mandatory mediation.
 - New provision.
- (c)(i) The mediator shall schedule a time and place for the mediation conference that are acceptable to the parties and mediator. Absent agreement, the mediator shall establish a time and place on no less than 21 days' written notice.

- Previously, 14 days' notice.
 - (c)(v) If the parties reach a settlement in principle before the mediation conference, the plaintiff will advise the mediator in writing within 1 business day.
 - New provision.
 - (f)(i) If a settlement is reached at mediation, the plaintiff shall file a Notice of Settlement (or motion and proposed order if necessary) within 30 days.
 - Within 60 days of the filing of the Notice of Settlement (or entry of settlement order), the parties will file a Stipulation dismissing the action. After 60 days, the Clerk's office will close the case.
 - Previously, the parties had 21 days to submit a stipulation or risk sanctions.
 - (f)(ii) The revised Local Rule clarifies that the mediator must file a "Certificate of Completion" with the Court in the event that the parties settle before the mediation conference.
 - Previously, a Certificate of Completion was required only after a mediation conference.
 - Local Rule 9019-5(f)(iii), which required the mediator to submit certain data after the mediation for informational purposes, has been deleted.
 - (j) The Court has adopted alternative procedures for preference proceedings in which the amount in controversy from any one defendant is less than \$75,000.
 - See discussion below.
- ❖ **Rule 9027-1: Statement of Notice of Removal Regarding Consent to Entry of Order or Judgment in Core Proceeding**
- New Rule.
 - All notices of removal to the District Court must contain a statement that the filing party does or does not consent to the Bankruptcy Court entering a final order in the event that it is determined that the Court does not have constitutional authority to do so absent consent of the parties.
 - Failure to include such a statement will waive the right to contest the Court's authority to enter final judgments.
- ❖ **Rule 9029-1: Statement in Response to Notice of Removal Regarding Consent to Entry of Order or Judgment in Core Proceeding**

- New Rule.
- All statements in response to a notice of removal must contain a statement that the filing party does or does not consent to the Bankruptcy Court entering a final order in the event that it is determined that the Court does not have constitutional authority to do so absent consent of the parties.
 - Failure to include such a statement will waive the right to contest the Court's authority to enter final judgments.

ADDITIONAL CHANGES MADE TO THE LOCAL RULES

❖ **2002-1(f): Notice and Claims Clerk**

- 2002-1(f)(v): Claims Agents must now maintain a separate creditor mailing matrix for each debtor in jointly administered cases.
- 2002-1(f)(vii): The Claims Agent must maintain an updated mailing list of all creditors and all entities who have filed proofs of claim and/or request for notices for *each case*.
- 2002-1(f)(ix): A separate provision has been created to address procedures for forwarding claims in the event of conversion. Additionally, the revised Local Rule requires the Claims Agent to box and transport all original claims to the Philadelphia Federal Records Center.
- 2002-1(f)(x): Addresses the Claims Agent's obligation to forward claims and the claims register upon conversion of case. The requirements have not changed.
- 2002-1(f)(xi): Upon conversion of a chapter 11, if there are more than 200 creditors, the Claims Agent shall (i) continue to serve all notices at the direction of the Trustee or the Clerk *or* (ii) submit a termination order. If the termination order is granted, the Claims Agent must comply with 2002-1(f)(x), discussed above.

❖ **2016-2(j): Fee Examiners**

- Clarifies that if the case is converted, the fee examiner's authority ends unless retained by the chapter 7 trustee or otherwise ordered by the Court.

❖ **3001-1(a): Filing Proof of Claim**

- 3001-1(a)(i): Amended to clarify that this provision governs paper claims.
- 3001-1(a)(ii): Provides that claims submitted through a court-approved electronic claims filing system are considered the original proof of claim. Additional copies for the Clerk and Trustee are not required to be submitted.

❖ **3003-1: Proofs of Claim in Chapter 11 Cases**

- Created separate provisions governing the filing of proofs of claim based on whether a claims agent is appointed.
- Clarifies that if a claim is submitted through a court-approved electronic claims filing system, additional copies of the claim are not required.

❖ **5009-1: Closing of Chapter 7 Cases**

- The Local Rule governing closing of chapter 7 cases has been renumbered from 5009-2 to 5009-1.

❖ **9010-1(e): Motion for Pro Hac Vice and Association with Delaware Counsel not Required.**

- The revised Local Rule retitles the section to clarify that pro hac vice motions are not required when association with Delaware counsel is not required.

❖ **9011-4(c): Signatures**

- A new provision states that the electronic filing of a proof of claim shall constitute the claimant's approved signature by law and that such claimants need not be registered CM/ECF users.

❖ **9019-5(j): Alternative Procedures for Certain Preference Proceedings.**

- New provision.
- Alternative procedures apply to adversary proceedings in which there is a preference claim for less than \$75,000.
- The plaintiff will serve a copy of this rule along with the Summons on any defendants to whom the rule applies.
- The defendant has 30 days after the date his response is due under the Summons to opt in to these alternative procedures by filing a Certificate in the form of new Local Form 118 on the adversary proceeding docket.
 - Extensions of the defendant's response deadline under the Summons do not extend this deadline.
 - If a defendant opts in, all of his claims in the adversary proceeding are subject to these procedures unless otherwise agreed by the parties.
- Within 10 days of the filing of a Certificate, the plaintiff shall file either (i) a stipulation and proposed order appointing a mediator or (ii) a request for the Court to appoint a mediator.
 - The Clerk may appoint a mediator if the parties fail to make such a filing.
- In adversary proceedings in which there is a preference claim for more than \$75,000, the plaintiff and defendant may jointly opt in by filing a Joint Certificate in the form of new Local Form 119.

- In the event of multiple defendants, only the defendant agreeing to opt in is subject to these procedures.
- The confidentiality provisions of Local Rule 9019-5(d) apply.
- The plaintiff shall bear the costs of the mediator.
- Mediation does not affect pending matters or schedules except as otherwise specified Local Rule 9019-9(j)(xi).
- (xi) Scheduling Order.
 - Any scheduling order entered by the Court shall apply to the parties except that this mediation shall stay (i) the requirement to serve initial disclosures under Fed. R. Bankr. P. 7026 and (ii) the right or obligation to propound or respond to discovery requests to or from parties to the mediation.
 - a. This stay terminates automatically upon the filing of the Certificate of Completion.
 - If mediation is unsuccessful, then within 2 business day of the entry of the Certificate of Completion, (1) the parties shall confer and agree to a revised scheduling order with timeframes calculated from the date of completion of the mediation and (2) one of the parties shall file the revised order under COC and serve it on the mediator.
 - a. If the parties fail to do so, the mediator shall file a notice adjusting the deadlines, and these adjusted deadlines shall govern absent further order of the Court. The mediator can also incorporate the notice of deadlines into his Certificate of Completion and thereby relieve the parties of their obligation to file a scheduling order.
 - To the extent that the plaintiff has multiple 9019-5(j) mediations completing within a given 14-day period, the plaintiff may elect to have its deadlines calculated from the date (or expected date) of the conclusion of the final mediation falling within that 14-day period.
 - The provisions of subsection (xi) apply only if the Court entered a form of scheduling order in the underlying proceeding before conclusion of mediation.
- (xii) Mediation Submission Materials.
 - Within 21 days of the filing of the Certificate, the defendant shall serve its position statement on the plaintiff and mediator, and the plaintiff shall serve its position statement on the defendant and mediator 21 days thereafter.

- a. No further statements absent leave of the mediator.
 - b. Position statements shall not be filed in the underlying adversary proceeding.
- Position statements (1) shall address the merits of the claim and any defenses, including relevant procedural or substantive issues and (2) should identify and discuss any then-known supporting evidence.
- Position statement shall not exceed 10 pages (exclusive of exhibits) without permission.
- (xiii) The Mediation Conference.
 - Mediation shall be concluded within 45 day of the service of plaintiff's mediation statement.
 - Representatives with full authority to settle and negotiate must attend the mediation in person. This may be the party's attorney in the underlying adversary proceeding. The party and any other representatives may appear remotely as directed by the mediator.
 - The mediator may establish other procedures for the mediation conference.
- (xiv) This mediation excuses the parties from other mediation that may be required by the Court's scheduling order, but should there be any additional mediation, the plaintiff shall not bear the presumption of cost.
- The following provisions apply to mediation under 9019-5(j):
 - 9019-5(c)(iii)(B) [sanctions for failure to attend mediation conference]
 - 9019-5(e) [Recommendations by Mediator]
 - 9019-5(f) [Post-Mediation Procedures]
 - 9019-5(g) [Withdrawal from Mediation]
 - 9019-5(h) [Termination of Mediation]