

Draft 2016 LOCAL RULE REVISIONS
U.S. Bankruptcy Court, Eastern District of Missouri
To be effective December 1 2016

Below are the proposed substantive revisions to the Local Rules of the Eastern District of Missouri that would take effect on December 1, 2016 if finally approved. There are seven Local Rules for which substantive revisions are being proposed, and they are detailed below. The revisions regard (1) procedures for withdrawing and substituting counsel; (2) procedures for consent motions; (3) procedures for amended schedules in light of developments from the new Official Forms; (4) conforming procedures for Standing Order 15-01 regarding photographic identification; (5) procedure to add the United States Attorney's Office to the government entities that must be served in Chapter 13 cases; (6) updated warning language for hearing notices; and (7) updated warning language for negative notice. Other revisions are non-substantive, conforming, or stylistic changes.

L.R. 2091 Explanation of Revisions - This rule is substantially changed to detail the steps necessary for an attorney to 1) withdraw from a case; and 2) substitute in as counsel for another attorney. The current rule simply does not clearly or comprehensively address the steps that must be taken or the title of the documents to be filed. A clean version of the proposed revised rule is provided first, since it is easier to follow due to the extensive revisions. The main changes are summarized as follows:

- 1) If an attorney that is not representing the debtor, trustee, or a committee has no pending matters, the attorney does not need a motion and order allowing withdrawal - a notice is sufficient in such instances.
- 2) A procedure is set forth for substituting counsel. After the motion or notice of withdrawal is filed, the incoming attorney files a notice of appearance. The withdrawal and notice of appearance may be combined if they are signed by both attorneys.
- 3) A procedure is set forth for substituting counsel where the outgoing attorney cannot or will not file a notice of withdrawal. The incoming attorney will file a motion to substitute counsel and set it for hearing.

L.R. 2091 - Withdrawal of Counsel. (Current Rule)

A. General Requirements

1. **Motion Necessary.** Except as provided in subsection (2), an attorney of record may withdraw from a main case and/or adversary proceeding only by order of the Court after service of a motion to withdraw on the client, any Trustee, and all entities having filed a request for notice. In Chapter 11 cases, the attorney shall also serve the motion to withdraw on the United States Trustee and any official committees. The motion shall list any pending matters and upcoming hearing dates that the client has in the main case and/or adversary proceeding. The motion shall be titled Motion to Withdraw as Counsel and may be ruled on without hearing.
2. **Motion Unnecessary.** If a) an attorney representing any party other than the Debtor, a Trustee, or an official committee wishes to withdraw from a main bankruptcy case, and the attorney's client does not have any matters pending associated with that case; or b) an attorney is being substituted pursuant to subsection (3), and the incoming and outgoing attorneys are of the same firm, a motion and order are not required. In such instances, the outgoing attorney shall file a notice of withdrawal titled Notice of Withdrawal of Counsel.

3. **Substitution of Counsel.**

- a. **Where Motion to Withdraw is Necessary.** Where a motion to withdraw is necessary pursuant to subsection (1), the withdrawing attorney shall file a motion to withdraw, and the incoming attorney shall file a notice of appearance in that order. The motion to withdraw and the notice of appearance may be combined in a single document if they are signed by the incoming and the outgoing attorneys and the document is titled Motion to Withdraw as Counsel and Notice of Appearance.
- b. **Where Motion to Withdraw is Unnecessary.** Where a motion to withdraw is unnecessary pursuant to subsection (2), the withdrawing attorney shall file a notice of withdrawal, and the incoming attorney shall file a notice of appearance in that order. The notice of withdrawal and the notice of appearance may be combined in a single document if they are signed by the incoming and the outgoing attorneys and the document is titled Notice of Withdrawal of Counsel and Notice of Appearance.
- c. **Outgoing Attorney Unavailable.** If a client is unable to get the outgoing attorney to file the necessary motion or notice of withdrawal, the incoming attorney shall file a motion to substitute counsel setting forth the reason(s) why the requisite motion or notice of withdrawal was not filed by the outgoing attorney. Such a motion shall be titled Motion to Substitute Counsel and must be set for hearing on 7 days notice to the client, any Trustee, the outgoing attorney, the United States Trustee, and all entities having filed a request for notice. The motion shall list any pending matters and upcoming hearing dates that the client has in the main case and/or adversary proceeding. Before filing any such motion, the incoming attorney shall have made a good-faith, thorough effort to locate and communicate with the outgoing attorney about the substitution, and such effort shall be detailed in the motion.

B. **Chapter 13 Attorneys Fees.** In Chapter 13 cases, the Trustee shall cease payment of attorneys' fees to an attorney who has, by order of the Court, been allowed to withdraw from a case unless the Court orders differently. An attorney entering as counsel for the debtor in a Chapter 13 case may, only within 7 days following the attorney's entry as counsel of record, petition not to be bound by the withdrawing attorney's fee election. Absent such a petition, the new attorney shall be bound by the withdrawing attorney's fee election. The new attorney may not petition the Court not to be bound by the withdrawing attorney's fee election if the withdrawing attorney and the incoming attorney are employed by the same firm.

L.R. 2091 - Withdrawal of Counsel. (Proposed Revised Rule)

A. **General Requirements**

1. **Motion Necessary.** ~~Except as provided in subsection (2), an~~ attorney of record may withdraw from a main case; and/or adversary proceeding, ~~or contested matter~~ only by order of the Court after service of a motion to withdraw on the client, ~~the~~any Trustee, and all entities having filed a request for notice. In Chapter 11 cases, the attorney shall also serve the motion to withdraw on the United States Trustee and any official committees. The motion shall list any pending matters ~~pending at the time of the motion to withdraw. The motion~~and upcoming hearing

dates that the client has in the main case and/or adversary proceeding. The motion shall be titled Motion to Withdraw as Counsel and may be ruled on without hearing. ~~Where the withdrawing attorney~~

2. **Motion Unnecessary.** If a) an attorney representing any party other than the Debtor, a Trustee, or an official committee wishes to withdraw from a main bankruptcy case, and the attorney's client does not have any matters pending associated with that case; or b) an attorney is being substituted pursuant to subsection (3), and the incoming and outgoing attorneys are employed by of the same firm, a motion and order ~~shall~~ are not ~~be necessary.~~ In such a situation required. In such instances, the outgoing attorney shall file a notice of withdrawal titled Notice of Withdrawal of Counsel.

3. **Substitution of Counsel.**

a. **Where Motion to Withdraw is Necessary.** Where a motion to withdraw is necessary pursuant to subsection (1), the withdrawing attorney shall file a motion to withdraw, and the incoming attorney shall file a notice of appearance in that order. The motion to withdraw and the notice of appearance may be combined in a single document if they are signed by the incoming and the outgoing attorneys and the document is titled Motion to Withdraw as Counsel and Notice of Appearance.

b. **Where Motion to Withdraw is Unnecessary.** Where a motion to withdraw is unnecessary pursuant to subsection (2), the withdrawing attorney shall file a notice of withdrawal, and the incoming attorney shall file a notice of appearance in that order. The notice of withdrawal and the notice of appearance may be combined in a single document if they are signed by the incoming and the outgoing attorneys and the document is titled Notice of Withdrawal of Counsel and Notice of Appearance.

c. **Outgoing Attorney Unavailable.** If a client is unable to get the outgoing attorney to file the necessary motion or notice of withdrawal, the incoming attorney shall file a motion to substitute counsel setting forth the reason(s) why the requisite motion or notice of withdrawal was not filed by the outgoing attorney. Such a motion shall be titled Motion to Substitute Counsel and must be set for hearing on 7 days notice to the client, any Trustee, the outgoing attorney, the United States Trustee, and all entities having filed a request for notice. The motion shall list any pending matters and upcoming hearing dates that the client has in the main case and/or adversary proceeding. Before filing any such motion, the incoming attorney shall have made a good-faith, thorough effort to locate and communicate with the outgoing attorney about the substitution, and such effort shall be detailed in the motion.

B. Chapter 13 Attorneys Fees. In Chapter 13 cases, the Trustee shall cease payment of attorneys' fees to an attorney who has, by order of the Court, been allowed to withdraw from a case unless the Court orders differently. An attorney entering as counsel for the debtor in a Chapter 13 case may, only within 7 days following the attorney's entry as counsel of record, petition not to be bound by the withdrawing attorney's fee election. Absent such a petition, the new attorney shall be bound by the withdrawing attorney's fee election. The new attorney may not petition the Court not to be bound by the withdrawing attorney's fee election if the withdrawing attorney and the incoming attorney are employed by the same firm.

L.R. 4001-1(F) Explanation of Revisions -There has been confusion as to whether verbal consent of the trustee is necessary where written consent is not required, particularly in Chapter 13 cases. There has also been confusion as to whether the motion must state that verbal consent has been obtained. The rule is proposed to be revised to address these issues and make one other minor revision. The revisions are explained as follows:

- 1) When listing the parties that must consent, the term “respondents” is replaced as there really are no “respondents” to a consent motion that has not yet been filed. It seems more accurate to use the phrase “parties primarily affected by the relief sought.”
- 2) Chapter-specific requirements for Chapters 7 and 13 are set forth in separate subsections to make the section read more cleanly and make these requirements easier to locate.
- 3) In subsections 2, it is made explicit whether the trustee must verbally consent, even when written consent is not required. Subsection 3 also makes clear that written consent must be obtained.

L.R. 4001-1 - Relief from the Automatic Stay

F. Consent Motions for Relief from the Automatic Stay.

- 1.** **General Provisions.** A consent motion for relief from the automatic stay shall be styled as a “consent motion.” Pursuant to L.R. 9013-1(F), a consent motion for relief from the automatic stay need not be set for hearing and may be ruled on without hearing. The Clerk of Court is authorized to waive the filing fee for a motion for relief from the automatic stay when the motion is filed with the written consent and signature of the Trustee and all ~~respondents. In a Chapter 13 case, the written consent of the Trustee is not necessary for domestic actions~~parties primarily affected by the relief sought. Consent may be shown by separate certificate of consent or certificate of no opposition signed by the ~~responding~~necessary party(ies), but such consent or no opposition shall be filed as part of the consent motion. ~~In a Chapter 7 case, the Trustee’s Report of No Distribution shall be deemed the Trustee’s consent to any motion for relief from the automatic stay, and the Trustee’s signature will not be required on the consent motion where such a report has been filed.~~ All consent motions for relief from stay shall be filed using the proper non-fee consent motion event in the CM/ECF system to avoid automatic assessment of the filing fee. Consent motions for relief to proceed with a domestic action do not require the signature of the non-debtor spouse.
- 2.** **Chapter 7 Cases.** The Trustee’s Report of No Distribution shall be deemed the Trustee’s consent to any motion for relief from the automatic stay. Neither the Trustee’s verbal nor written consent shall be required to have the fee waived pursuant to subsection 1 where such a report has been filed.
- 3.** **Chapter 13 Cases.** In a Chapter 13 case, to have the fee waived pursuant to subsection 1, the written consent of the Trustee is necessary.

Amended Schedules, Conversions, and the New Official Forms

The new Official Form schedules that went into effect on December 1, 2015 have created problems with our current Local Rules 1009(A). LR 1009(A) provides that debtors filing amended schedules include only the info that has changed.

When filing amended schedules using the new Official Forms that took effect on 12/1/2015, many, if not most, debtors are checking “no” for other unrelated boxes on the forms even if they still have items that are responsive to these other questions. It appears that this may be a software issue that is continuously tripping up the debtors. For example, a debtor files schedule A/B at the beginning of the case and lists her house and her car. The debtor then files an amended schedule A/B to add a boat. She still has the house and the car. On the amended schedule A/B, she lists only the boat, but she checks “no” for the questions, “Do you own any residence, etc.?” and “Do you own any cars, vans, trucks, etc.?”

The issue with checking “no” for these other questions is that the debtor is now making a representation on her amended schedule that she no longer owns any of these originally scheduled items when, in fact, she still does. This has led to confusion and inaccuracy. Because there were no check boxes asking questions on the old Official Forms, this wasn’t an issue before 12/1/2015 when the new forms went into effect. This same issue appears to exist with respect to the use of the Official Forms when filing the lists of post-petition debts, property, and other items upon conversion under LR 1019(A)(2)(b).

Given this and other issues with the more comprehensive questions on the new Official Forms (the forms now cross-reference numbered items on other forms, as another example, so, if you add something to one form, the cross-reference to another form may no longer be accurate), it is no longer practicable to have rules that ask the debtors to only provide new information on amended schedules.

Proposed Revisions to LR 1009

The proposed amendment to LR 1009 will require debtors, when amending their schedules, to include all information on the schedule as revised – not just the newly added or revised items (in the above example, the debtor would list her car, her house, and her boat rather than just her boat). The debtors would, then, identify the changes in the accompanying memorandum as required now, so that the Court and trustees can continue to readily see the items that have changed. Below is a comparison version of L.R. 1009, showing the proposed changes.

L.R. 1009 - Amended Schedules and/or Matrix.

- A. **Content of Amended Schedule or Matrix.** An amended schedule and/or matrix shall include ~~only the names and addresses that have been newly added, or for which information has changed.~~ all information for the schedule as amended - not just the newly added or revised information. Along with the amended schedule and/or matrix, the debtor shall file a signed declaration and/or verification (as applicable) for the amended schedule and/or matrix. Along with any amended schedule and/or matrix, the debtor shall file a memorandum identifying the changes made by the amendment. If adding a creditor or creditors in a Chapter 7 case, the Notice of Amendment to Schedules and/or Matrix to Add Creditor(s) (Local Form 26) shall be filed. To delete a creditor or

creditors, file the appropriate amended schedule displaying the creditor's(s') name and the words "DELETE CREDITOR" along with a memorandum identifying the reason for the change(s). The memorandum shall list the name(s) of the creditor(s) affected by the amendment and a description of the applicable change(s).

L.R. 1002(A) Explanation of Revisions - On November 30, 2015, Standing Order No. 15-01 was issued by the Bankruptcy Judges. This standing order closed the drop-box at the courthouse in St. Louis, Missouri and requires photo identification for all non-attorney in-person filers and couriers. The standing order was placed in the Bankruptcy Clerk's Office and on the Bankruptcy Court's web site pursuant to L.R. 1001(H). The rule is proposed to be revised to add the standing order directive into the local rules. The revised language is below:

L.R. 1002 - Case Commencement.

A. Declination of Filing. The Clerk of Court shall decline to accept for filing, and the Court shall promptly dismiss any case if:

1. the voluntary petition is not signed by the debtor, or the involuntary petition is not signed by the petitioning creditors;
2. the voluntary petition is not accompanied by a matrix and verification pursuant to L.R. 1007-7; **or**
3. the filing fee is neither paid nor provided for by an Application to Proceed In Forma Pauperis or an Application to Pay Filing Fee in Installments or through the Chapter 13 plan, as applicable;
4. An unrepresented party presenting a bankruptcy petition or documents relating to the petition for filing at the intake counter does not produce and allow the Clerk of Court to scan or copy their current and legible government-issued photo identification; or
5. A person acting on behalf of an unrepresented party presenting a bankruptcy petition or documents relating to the petition for filing at the intake counter does not produce and allow the Clerk of Court to scan or copy their current and legible government-issued photo identification along with providing a copy of the filers' current and legible government-issued photo identification.

L.R. 2002-1(B) Explanation of Revisions - This rule is proposed to be revised to add the United States Attorney's Office to the government entities that must be served in Chapter 13 cases and reflects current practice.

L.R. 2002-1 - Address for Service.

- B. **Internal Revenue Service and Missouri Department of Revenue Certain Government Entities**. Refer to the Procedures Manual for the addresses to be used for service on the United States Internal Revenue Service ~~and~~ the Missouri Department of Revenue, ~~and the United States Attorney's Office, Eastern District of Missouri.~~ The Internal Revenue Service must be included on the debtor's mailing matrix in all Chapter 11 cases. The Missouri Department of Revenue and the United States Attorney's Office, Eastern District of Missouri's addresses must be included on the debtor's mailing matrix in all Chapter 13 cases.

Updated Warning Language

L.R.s 9060(B) and 9061(C) are revised to make the warning language to parties easier to understand and more user-friendly.

L.R. 9060 - Notices and Hearings.

B. **Format of Notice of Hearing.**

1. **Content of Notice of Hearing.** The notice of hearing shall:
 - a. identify the motion or pleading to which it relates;
 - b. state the hearing date, time, and place in the caption;
 - c. contain or be accompanied by a certificate of service conforming to L.R. 9004(D); and
 - d. state in bold print, substantially the following:

WARNING: ~~Any response or objection shall be filed with the Court by _____ (month, date & year) (See L.R. 9013-1(B) and 9013-2(B), or other Rules as applicable). A copy shall be promptly served on the undersigned. Failure to file a timely response may result in the Court granting the relief requested prior to the hearing date. THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE BY DATE, MONTH, YEAR.~~

YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. THE DATE IS SET OUT ABOVE. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

2. **Combined Motion and Notice of Hearing.** When both a notice of hearing and motion will be served, they may be combined into one document by including the text of the notice at the beginning of the motion. If a combined notice and motion format is used, the title of the document shall indicate that the pleading is both a notice and a motion. Objections to claims shall follow the format of Local Forms 10, 11, and 12.

L.R. 9061 - Negative Notice Procedures.

- C. **Format for Negative Notice.** Any motion, application, or pleading set on Negative Notice shall include a warning in substantial compliance with the following, using bold print and capitalized text, and appearing immediately below the title of the pleading:

~~PLEASE TAKE NOTICE: ANY RESPONSIVE PLEADING IN OPPOSITION TO THIS MOTION/PLEADING MUST BE FILED IN WRITING NO LATER THAN 21 DAYS FROM THE DATE OF SERVICE OF THIS MOTION/PLEADING AS SHOWN ON THE CERTIFICATE OF SERVICE. (See L.R. 9013-1(B) and 9061(B)) THE RESPONSE MUST BE SERVED AT THE TIME OF FILING ON THE UNDERSIGNED AND ON ALL ENTITIES DESCRIBED IN L.R. 9013-1(A). THE COURT MAY GRANT THE MOTION/PLEADING~~ **THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO ANY PARTY ON EXPIRATION OF THE RESPONSE PERIOD IF NO RESPONSE IS FILED.**

~~IF A RESPONSE OR OBJECTION IS FILED, THE MOVANT, APPLICANT OR CLAIM OBJECTOR SHALL SET THE MATTER FOR HEARING AND PROVIDE NOTICE THEREOF TO THE RESPONDENT AND ALL ENTITIES DESCRIBED IN L.R. 9013-1(A).~~

YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING, THE DATE OF WHICH WILL BE SENT TO YOU IF YOU FILE A RESPONSE. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.