

Proposed Substantive Changes to the Local Rules - 2018

2018 PROSED REVISIONS TO THE LOCAL RULES U.S. Bankruptcy Court, Eastern District of Missouri (Effective December 1, 2018, if approved)

Below are the proposed substantive revisions to the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Missouri that will become effective on December 1, 2018, if approved. The Local Rules with substantive revisions are detailed below. These revisions regard:

1. Clarification of the effect of a reinstatement on deadlines;
2. Application of the Federal Bankruptcy Rule 1019 for case deadlines when a case reconverts to a Chapter 7 from a Chapter 13;
3. A new procedure regarding pro hac vice attorney admission;
4. Expansion of discretion in the allowance of professional fees;
5. New maximum amounts for Chapter 13 attorney fees;
6. Clarification of local procedures for final mortgage payments to be consistent with amendments to Fed. R. Bankr. P. 3002.1;
7. A mandate that the debtor must pay lease payments on real property directly to the creditor to be consistent with the local Chapter 13 form plan;
8. Update to the amount the trustee can pay in attorney fees during the Chapter 13 plan;
9. Update to the procedure for individual Chapter 11 discharges;
10. Update to the procedure for approval of reaffirmation agreements;
11. Removal of the consent provision regarding jury trials in bankruptcy court consistent with the Fed. R. Bankr. P. 9015; and
12. Change to the negative notice procedures for incurring automobile debt in Chapter 13 cases.

Other revisions are non-substantive, conforming, or stylistic changes.

1. **L.R. 1017-2 and 1017-3 – Explanation of Revisions.** The changes make the local rule consistent with the current practice of the Court resetting certain deadlines when a dismissed bankruptcy case is reinstated.

L.R. 1017-2 - Motions to Reinstate Following Dismissal for Failure to File or Provide Required Documents or Attend § 341 Meeting.

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C. Effect of Reinstatement on Deadlines.

If a case is dismissed and reinstated, the Court will determine whether the deadlines in the case ~~to object to the debtor's discharge and/or the dischargeability of a debt~~ need to be extended. The Court will send notice of any such deadline extension to all creditors and parties in interest. ~~If there is no such deadline extension explicitly decreed in the~~

~~Court's Order of reinstatement, the deadlines are not extended. The motion to reinstate shall be the debtor's request to extend these deadlines.~~

L.R. 1017-3 - Motions to Reinstate Following Dismissal on Trustee's Motion to Dismiss for Failure to Make Plan Payments. (New Subsection)

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C. Effect of Reinstatement on Deadlines.

If a case is dismissed and reinstated, the Court will determine whether the deadlines in the case need to be extended. The Court will send notice of any such deadline extension to all creditors and parties in interest.

2. **L.R. 1019 (C) – Explanation of Revisions.** The changes make the local rule consistent with the current practice of the Court resetting certain deadlines when a bankruptcy case is reconverted from a Chapter 13 back to a Chapter 7.

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C. Reconversion of Certain Chapter 13 Cases.

Although the failure to timely take any action required by this Rule constitutes cause for dismissal, the Court ordinarily will reconvert a case converted from Chapter 7 to Chapter 13, rather than dismiss the case if the debtor fails to:

1. file the documents required by this Rule or as required in the order of conversion;
2. attend the § 341 Meeting;
3. propose a plan in good faith; or
4. timely commence plan payments.

If the case is reconverted to a Chapter 7, Fed. R. Bankr. P. 1019 is applicable.

3. **L.R. 2090(B)- Attorney Admission – Explanation of Revisions.** The changes clarify that appearances by telephone require pro hac vice admission, limit the actions an attorney can take in a case prior to applying for pro hac vice admission, and expands the pro hac vice admission to all associated cases to a lead bankruptcy case.

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B. Admission Pro Hac Vice and Local Counsel.

1. **Motion.** An attorney who is not a member of this Court but is a member in good standing of the bar of the highest court of any state or the District of Columbia may be permitted to appear (including by telephone) and file documents in a case before this Court only when admitted pro hac vice pursuant to applicable rules of the United States District Court for the Eastern District of Missouri. The Motion shall be filed using Local Form 7 (with any necessary modifications) and shall be accompanied by the registration fee payable to the United States District Court. If the motion is a paper filing, the movant shall provide a check made payable to “Clerk,

U.S. District Court” at the time of filing the motion. The Court will consider such motions without hearing. Counsel shall serve the Motion for Admission Pro Hac Vice on attorneys for the party(ies) involved in the matter for which counsel seeks admission, the Trustee, and, in Chapter 11 cases, the United States Trustee. The Court may deny a pro hac vice motion for any reason, including a disbarment or suspension from any court. Admission by pro hac vice in a lead bankruptcy case is applicable to all associated cases.

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3. **Appearance without Pro Hac Vice Admission.** An attorney who is not admitted to this Court may appear without pro hac vice admission ~~for the following purposes: (a) to file a Notice of Appearance and Request for Service and ; (b) to file a proof of claim; (c) to attend and fully participate in the § 341 Meeting; and/or (d) to file a ballot in a Chapter 11 case.~~

4. **L.R. 2016-2(B) – Explanation of Revisions.** The changes allow discretion in awarding professional fees based on future invoices when a fee application has not been timely filed.

L.R. 2016-2 - Payment of Professional Fees in Chapter 11 Cases.

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B. Monthly Bills (Fee Statements) in Chapter 11 Cases.

In Chapter 11 cases, the debtor is authorized to pay 80% of a professional’s fees and 100% of the professional’s expenses on a monthly basis in accordance with this Rule. To receive compensation on a monthly basis prior to allowance on an interim application, the professional shall prepare a bill or fee statement in compliance with the Court’s “Guidelines for Compensation” in the Procedures Manual and shall submit the statement to the L.R. 9013-3(D) Master Service List or to those who would be on such a list. Any objections to the statement shall be submitted to the applicant. If any objections are unresolved after the parties confer, the objecting party shall file the objection with the Court and attach a copy of the fee statement to the objection. The Court will determine whether to set the matter for hearing. All monthly payments of fees and expenses are subject to approval, modification or disgorgement on interim application which may not be filed sooner than every 120 days nor less frequently than every 180 days. In any case that has been pending more than 180 days, ~~a no~~ professional ~~shall~~ may not, in the Court’s discretion, be permitted to receive payment on a monthly bill or fee statement unless such professional has filed one or more interim fee applications covering all services provided more than 180 days before the date of such monthly bill or fee statement.

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5. **L.R. 2016-3– Explanation of Revisions.** The changes increase the current flat fee election for attorney fees in Chapter 13 cases beginning December 1, 2018.

L.R. 2016 -3 Employment and Compensation of Debtor’s Counsel in Chapter 13 Cases.

A. **Fee Election Requirements.**

Attorneys for debtors in Chapter 13 cases may receive compensation for professional services and reimbursement of expenses under either a “Flat Fee Option” or a “Fee Application Option” in accordance with these Rules. Attorneys for debtors in Chapter 13 cases shall disclose which fee election option the attorney elects by using the “Attorney Fee Election Form” event. The fee election event shall be completed at the time of the attorney’s initial Fed. R. Bankr. P. 2016(b) disclosure.

1. **Flat Fee Option.** Attorneys for debtors in Chapter 13 cases who elect the “Flat Fee Option” shall, without application to the Court, be permitted to be paid attorneys’ fees, including expenses, not to exceed \$4,~~800~~000 for cases filed on or after ~~December~~ ~~March~~ ~~10~~, 201~~8~~~~1~~ (plus the filing fee if the filing fee is advanced).

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6. **L.R. 3002.1 – Explanation of Revisions.** The changes make the local rule consistent with the new Fed. R. Bankr. P. 3002.1 by allowing any party in interest to request the determination of final payment of a mortgage on the debtor(s)’ primary residence.

L.R. 3002.1 (A) – Notice Relating to Claims Secured by Security Interest in Debtor’s Principal Residence.

A. **Filing.**

~~Proofs of Claims~~ related to debts secured by a security interest in the Debtor’s principal residence shall ~~be filed the proof of claim~~, together with the attachments required by Fed. R. Bankr. P. 3001(c)(2)(C), no later than 70 days after the order for relief. Any attachments required by Fed. R. Bankr. P. 3001(c)(1) and (d) shall be filed as an attachment to the claim no later than 120 days after the order for relief. Any notice required by Fed. R. Bankr. P. 3002.1 to be filed as a supplement to a proof of claim shall be filed on the case docket instead of in the claims register. The Clerk’s Office shall cause any such notice, once it has been filed on the case docket, to be linked to the appropriate proof of claim as a supplement in the claims register without any further action required by the filer. The filer shall still be responsible for serving the notice on the requisite parties as provided under applicable noticing procedures, including certificate of service procedures and for taking any other action required in relation to the notice. Objections to payment changes or to a notice of fees, expenses, and charges may be filed by any interested party in accordance with Fed. R. Bankr. P. 3002.1.

7. **L.R. 3015-2(D) – Explanation of Revisions.** The changes make the local rule consistent with the form Chapter 13 Plan regarding the debtor paying lease payments on real property directly to the creditor. The change also eliminates the outdated language of “outside the plan.”

L.R. 3015-2(D) - Payments by the Debtor Directly to the Creditor, through the Plan

The plan shall provide for ~~all the following~~ claims to be paid by ~~the debtor directly to the creditor the Trustee through the plan except as noted herein or as permitted by the Court.~~ The following may be paid outside of the plan:

1. Claims on the home in which the debtor resides, if the claim is for: ~~a. — post-petition mortgage payments or ; b. — post-petition mobile home payments; ;~~
~~c. — post petition rent payments; and~~
2. Claims for child support arrearage if the arrearage was being paid pursuant to a pre-petition agreement and the child support creditor consents to continuation of the payment arrangement post-petition. Consent of the creditor shall be in writing, filed with the Court and served on the Trustee prior to the hearing on confirmation of the plan.
3. Lease payments related to any assumed executory contracts for real property.

8. **L.R. 3015-2 (G) – Explanation of Revisions.** The changes eliminate references to old cases no longer in the system and update the local rule to be consistent with current fee limitations and elections in Chapter 13 cases.

G. Payment of Chapter 13 Attorneys Fees through Plan.

~~a. In cases filed prior to October 17, 2005: When paid through the plan, unless otherwise specified, the Chapter 13 Trustee shall pay the debtor’s attorney’s fees at the rate of 35% of funds available for distribution at the disbursement level for secured creditors.~~

~~b. In cases filed on or after October 17, 2005:~~ The debtors’ attorney’s fees shall be paid by the Trustee after monthly payments to secured creditors. However, a maximum of \$2,400 in attorney fees, minus any attorney fees paid directly by the debtor, may be paid after monthly payments for post-petition real estate contract payments, post-petition executory contract payments, and unassigned domestic support obligation payments. Such fees shall be paid in equal monthly payments over ~~eighteen~~ twelve or more months. Any attorney fees owed and not paid or payable in equal monthly payments as stated above shall be paid as a lump sum at a disbursement level after all secured claims. If an attorney chooses to amend a confirmed plan to add a provision for payment of some fees in equal monthly payments, the Trustee shall establish the monthly payment by dividing the fees remaining to be paid under the paragraph by the remainder of the repayment period in the paragraph.

9. **L.R. 4004-1 (C)– Discharge – Explanation of Revisions.** The changes eliminate a procedure not currently required by the Court but require the Debtor(s) in a Chapter 11 individual case to request a discharge by filing a motion that complies with 11 U.S.C. § 1141(d)(5).

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C. **Discharge in an Individual Chapter 11 Case. Notice Regarding Bankruptcy Code § 1141(d)(5)(C).**

~~Before a discharge may be entered in an individual’s Chapter 11 case filed on or after April 20, 2005, the debtor shall file a motion that complies with 11 U.S.C. § 1141(d)(5). send a notice regarding Bankruptcy Code § 1141(d)(5)(C) to the L.R. 9013-3(D) Master Service List or on those who would be on such a list. This notice is to be filed with the Court. The notice will set a 14 day deadline for any interested party to file a response to the notice and request a hearing if the party has reasonable cause to believe that (i) Bankruptcy Code § 522(q)(1) is applicable to the debtor; and (ii) that there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in Bankruptcy Code § 522(q)(1)(A) or liable for a debt of the kind described in Bankruptcy Code § 522(q)(1)(B). If no response to the notice is filed on or before the expiration of the 14 day deadline, the Court may enter a discharge without further notice or hearing regarding Bankruptcy Code § 1141(d)(5)(C).~~

10. **L.R. 4008 – Explanation of Revisions.** The changes update the procedure for seeking approval of reaffirmation agreements.

L.R. 4008 - Reaffirmation Agreements.

The Court ~~may~~**will** set a hearing to consider approval of those reaffirmation agreements that do not include the **signature certification** of the debtor’s attorney where Court action on the reaffirmation agreement is required. A request to approve a reaffirmation agreement that does not include the **signature certification** of the debtor’s attorney shall be presented by motion. ~~A motion seeking approval of a reaffirmation agreement shall be filed using the “Reaffirmation Agreement and Motion to Approve” event. The Court will set a hearing on such reaffirmation agreement.~~

11. **L.R. 9015(B)(8) – Explanation of Changes.** The changes remove the consent provision regarding jury trials in bankruptcy court to be consistent with the Fed. R. Bankr. P. 9015.

B. Jury Demand and Withdrawal of Reference.

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8. **Motion for Withdrawal of the Reference in Adversary Proceeding where Jury Trial Demanded.** Any party may file and serve a motion in accordance with L.R. 5011 in the Bankruptcy Court to withdraw the reference pursuant to 28 U.S.C. § 157(d). ~~Failure of any party to file and serve a timely motion to withdraw the reference shall be construed as consent by all parties to the bankruptcy judge presiding over the jury trial in the adversary proceeding.~~

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12. **L.R. 9061(B)-(D) – Explanation of Changes.** The changes reduce the negative notice period from 21 days to 14 days for a debtor who is requesting permission to incur automobile debt in a Chapter 13 case. The changes also shorten the amount of notice for a hearing from 21 days to 14 days when a response is filed to the debtor's motion.

L.R. 9061 Negative Notice Procedures

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B. Response to Matters set on Negative Notice.

Unless another time period is specified by the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, these Rules, or a Court notice or order, any party served with a motion or pleading to be heard on Negative Notice shall have 21 days after service to file a response to the motion or pleading. The response time for motions for continuation of utility service/adequate assurance of payment under 11 U.S.C. §366 shall be 30 days. The respondent shall serve the response at the time the response is filed on the movant or applicant and on all entities described in L.R. 9013-1(A). The negative notice period to file a response to a motion to incur debt relating to an automobile in a Chapter 13 case shall be 14 days after service.

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:

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 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.

D. Notice of Hearing when a Response is Filed.

If a response is filed, the movant, applicant, claimant, or claim objector shall schedule the matter for hearing by contacting the Courtroom Deputy for the assigned judge or by consulting the Court's web site. Such party shall file and serve a notice of hearing on the respondent and all entities described in L.R. 9013-1(A). The notice of hearing shall provide the amount of notice specified below. Nothing precludes any party or the Court from setting a matter for hearing if a response is filed.

1. **14 days notice of hearing required for:**
 - a. motions to compel abandonment of property;
 - b. motions to avoid liens on exempt property;
 - c. motions for continuation of utility service/adequate assurance of payment under 11 U.S.C. §366;
 - d. motions to incur debt (automobile debt only); and
 - e. motions to dismiss (except as noted below).