United States Bankruptcy Court
Eastern District of Missouri

Thomas F. Eagleton U. S. Courthouse
St. Louis, MO

Local Bankruptcy Rule Changes

These training materials cover the amendments to the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Missouri that have been approved by the 8th Circuit and will become effective on December 1, 2020. This represents all substantive and non-substantive changes to the Court's Local Rules. A copy of this training document and a redline version of the proposed amendments to the Local Rules can be found on the Court's website at http://www.moeb.uscourts.gov/rules-and-procedures.

Revised Local Bankruptcy Rules – Effective December 1, 2020

1. **L.R. 1002 – Case Commencement.** The change was made to require debtors to serve their Amended Petition on all parties. Subsection H will be added to L.R. 1002 regarding Case Commencement.

   L.R. 1002 – Case Commencement.
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   H. Service of Amended Petition.

   Should there be cause for the debtor to file an Amended Petition, the Amended Petition must be served upon all creditors and parties to the case.

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   Practice Point: Failure to properly serve an Amended Petition pursuant to Local Rule 1002(H) will result in the Bankruptcy Court issuing a Notice of Errors giving counsel seven (7) days to properly serve the Amended Petition and file a certificate of service to that effect.

2. **L.R. 1006 - Payment of Filing Fees in Installments or Waiver of Filing Fee.** The change was made to simplify the language concerning when an application for a filing fee waiver will be denied for compensating an attorney or petition preparer in connection with the case.

L.R. 1006 – Payment of Filing Fees in Installments or Waiver of Filing Fee

A. General Requirements.

All applications to pay filing fees in installments must be filed using a form in substantial conformity with Local Form 1. No proposed order should be submitted with the application. Fifty percent of the filing fee must be paid within 7 days of the filing of the petition if not paid when the petition is filed. The Court will not grant an application to pay the filing fee in installments if the debtor's attorney has already been paid $300 or more at the time the petition is filed or the debtor has paid a petition preparer in connection with the case. Any application for a waiver of the filing fee will be denied if the debtor has paid a petition preparer or attorney in connection with the case. ~~Any application for a waiver of the filing fee will be denied if the debtor's attorney receives compensation for work performed in connection with the debtor's bankruptcy case or the debtor has paid a petition preparer in connection with the case.~~

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3. **L.R. 1017-1 – Motions to Dismiss.** The change was made to broaden the ability for debtors and the Trustee to enter into a stipulation to settle a Motion to Dismiss a Chapter 13 case for failure to make plan payments.

L.R. 1017-1 – Motions to Dismiss

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E. **Amended Plan or Other Responses to the Chapter 13 Trustee's Motion to Dismiss for Failure to Make Plan Payments**.

To avoid dismissal on the Trustee's motion to dismiss for failure to make plan payments, the debtor must become current in plan payments to the Trustee. The debtor may become current by performing one of the following:

1. making payment to the Trustee;

2. entering into a stipulation with the Trustee ~~if the motion to dismiss is the first such motion;~~ (The stipulation shall propose extra monthly payments to cure the missed payments within 12 months ~~and the extra payments shall not exceed 25% of the regular monthly payment~~) or

3. filing an amended plan which cures the missed payments. Any amended plan shall follow the procedures for Chapter 13 plans outlined in these Rules and contain terms that address the missed payments as well as future plan payments.

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4. **L.R. 2015-2 – Duty of Debtor in Chapter 13 Case.** The change was made to require only debtors who have allowed their auto insurance to lapse in the last twelve (12) months to prepay at least three (3) months insurance on their vehicle.

L.R. 2015-2 – Duty of Debtor in Chapter 13 Case

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C. Insurance on Motor Vehicles in Chapter 13 Cases.

1. **Required Coverage**. The debtor in a Chapter 13 case must maintain insurance on any motor vehicle on which a lien exists to secure a debt. Absent agreement between the debtor and the lienholder, the debtor must:

   a. prepay at least three (3) months insurance on the vehicle if the debtor has allowed their insurance coverage on the vehicle to lapse within the previous twelve (12) months; and

   b. provide for the collision and comprehensive deductible to be $500 and provide for the insurance policy to name the lienholder as a loss payee. If the security agreement or other contract requires a deductible lower than $500, such contract will govern the amount of deductible the debtor is required to maintain during the bankruptcy case.

2. **Proof of Insurance Coverage**. The debtor in a Chapter 13 case must provide the lienholder with proof of ~~3 months prepaid~~ insurance providing full coverage from the date of the bankruptcy petition. If the debtor has allowed their insurance policy to lapse within the twelve (12) months prior to the date of the bankruptcy petition, the debtor must provide the lienholder with proof of three (3) months prepaid insurance providing full coverage from the date of the bankruptcy petition. If the insurance policy lapses during the pendency of the case, the debtor is required to provide new proof of coverage, which should include proof of three (3) months prepaid insurance. A copy of the policy or the policy declaration sheet and a copy of a receipt or similar payment statement from an insurance agent on company letterhead may be used as proof of coverage if the documents verify the terms of coverage and pre- payment of premiums.

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5. **L.R. 2091 – Withdrawal of Counsel**. The change was made to clarify that a substitution of debtor's counsel can be done through a joint Notice of Withdrawal of Counsel and Notice of Appearance when substitute counsel is part of the same law firm and counsel withdrawing.

L.R. 2091 - Withdrawal of Counsel.

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 must also serve the motion to withdraw on the United States Trustee and any official committees. The motion should list any pending matters and upcoming hearing dates that the client has in the main case and/or adversary proceeding. The motion should be titled Motion to Withdraw as Counsel and may be ruled on without hearing.

2. **Notice Necessary ~~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.~~

A notice of withdrawal is necessary 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.

In such instances, a motion and order are not required, and the outgoing attorney must file a notice of withdrawal titled Notice of Withdrawal of Counsel in substantial conformity with Local Form 30.

3. **Substitution of Counsel**.

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

b. **Where a Notice of Withdrawal ~~Motion to Withdraw~~ is Necessary ~~Unnecessary~~**. Where a notice of withdrawal ~~motion to withdraw~~ is necessary ~~unnecessary~~ pursuant to subsection (2), the withdrawing attorney must file a notice of withdrawal and the incoming attorney must 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 attorney 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 must 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 should 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 should 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 must have made a good-faith, thorough effort to locate and communicate with the outgoing attorney about the substitution, and such effort should be detailed in the motion.

d. **Disclosure of Compensation.** If not filed simultaneously with the motion to substitute as counsel, substitute counsel must file a Disclosure of Compensation and Fee Election Form within fourteen (14) days after the motion is filed.

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6. **L.R. 3015-2 – Chapter 13 Plans – Plan Contents.** The change was made to clarify that all claims must be paid by the Trustee directly to creditors, except for those claims allowed by the Local Rules or the Court be paid directly by the debtor to the creditor.

L.R. 3015-2 – Chapter 13 Plans – Plan Contents
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D. Payments by the Debtor Directly to the Creditor.

The plan must provide for all claims to be paid by the Trustee directly to creditors except as provided herein or as permitted by the Court. The following may be paid by the debtor directly to the holders of ~~The plan may provide for the following claims to be paid by the debtor directly to the creditor~~:

1. Claims on the home in which the debtor resides, if the claim is for post-petition mortgage payments or post-petition mobile home payments.

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 must 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.

7. **L.R. 3015-5 - Chapter 12 and 13 Plans - Post-Confirmation Amendments and Modifications.** The titles of Subsection A, B, and C have been changed to reflect the relief counsel must seek after filing an amended plan. The Court has decided it is improper to call the motion a Motion to Amend a Confirmed Plan, because the amended plan will have already been filed when the motion is being ruled upon. The proper relief is the approval or confirmation of the amended plan that has been filed.

L.R. 3015-5 - Chapter 12 and 13 Plans - Post-Confirmation Amendments and Modifications

A. **Motion to Approve or Confirm an Amended Plan ~~Amend a Confirmed Plan~~.** A debtor who seeks to amend a confirmed plan must do so by motion. Such a motion should include a brief but specific statement of the reason for the amendment and should identify all changes to the plan terms. In conjunction with the motion to amend, the debtor must file an amended plan and either an amended budget or a statement that there has been no change in the debtor's income and expenses. Such statement or amended budget must be signed by the debtor.

B. **Service of Motion to Approve or Confirm an Amended Plan ~~Amend a Confirmed Plan~~.**

1. **Generally**. The debtor must serve a copy of the motion to amend, the amended plan and either an amended budget or statement that there has been no change in income or expenses on the Trustee and on all creditors and parties in interest. The debtor must contact the Courtroom Deputy to have the motion to amend and the amended plan scheduled for hearing on the next confirmation calendar that is not sooner than 21 days after service of the motion to amend. The debtor must send notice of the confirmation hearing to all parties served with the motion and amended plan. The date,

time, and location of the confirmation hearing must be stated in the caption of the amended plan.

2. **Limited Service**. Unless otherwise directed, service of the motion to amend a confirmed plan, the amended plan and either an amended budget or statement that there has been no change in income or expenses may be limited to the Trustee if the proposed amended plan meets either of the following criteria:
    a. the proposed plan only changes the terms of the confirmed plan by increasing the amount of the plan payment or plan duration; or, in a Chapter 13 case,
    b. the proposed plan:
        i. changes 12 or fewer monthly payments;
        ii. lowers the monthly plan payment by less than twenty-five percent of the existing plan payment;
        iii. is the first amendment to the debtor's first confirmed plan; and
        iv. does not waive any missed plan payments.

C. **Objections to Motion to Approve or Confirm an Amended Plan ~~Amend a Confirmed Plan~~**.
Objections to the debtor's motion to amend a confirmed plan and to the proposed amended plan must be filed and served on the debtor (if unrepresented by an attorney), the debtor's attorney (if any), and the Trustee no later than 21 days after service of the motion to amend, the amended plan and an amended budget or statement that there has been no change in income or expenses. The Court may waive the 21-day objection period in the interest of judicial economy. Failure to appear or prosecute an objection at the confirmation hearing will be considered an abandonment of the objection.

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Practice Point: Counsel should title their motion "Motion to Approve or Confirm an Amended Plan," and refrain from using the title "Motion to Amend a Confirmed Plan."

8. **L.R. 8001 – Notice of Appeal and Election to Have Appeal Heard by District Court.** The change was made to clarify that an appellant must file their designation of the record and statement of the issues on appeal either simultaneous with the notice of appeal or within fourteen (14) days after filing the notice of appeal.

L.R. 8001 – Notice of Appeal and Filing Requirements ~~and Election to Have Appeal Heard by District Court.~~

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C. **Appeals to the District Court**.

To appeal to the District Court, the appellant must file with the Clerk of the Bankruptcy Court:

1. The notice of appeal and any election to have the appeal heard by the District Court in substantial conformity to Bankruptcy Official Form 417 A (along with a certificate of service);

2. The filing fee;

3. The U.S. District Court cover sheet (available on the Bankruptcy Court's web site or the District Court's web site); and

4. The party's designation of record and issues on appeal. This must be filed with the notice of appeal or within fourteen (14) days after the filing of the notice of appeal.

All documents filed after the notice of appeal, other than those documents listed above, must be filed with the District Court unless the Federal Rules of Bankruptcy Procedure direct otherwise.

9. **L.R. 9004 – Format and Title of Filings.** The change has been made to clarify that each certificate of service, whether attached to a document or filed as its own document, must include the signature of the party serving the document.

L.R. 9004 – Format and Title of Filings

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D. **Certificates of Service**
All filings must include, or be accompanied by, a certificate of service, signed by the party serving the document, identifying (i) each person or entity served with the filing; (ii) the date of service; and (iii) the manner of service.

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Practice Point: Complying with this rule may result in two signatures on the document and those signatures may be, in some circumstances, from different people, e.g. the attorney signing the pleading and the person serving the document.

Practice Point: The CM/ECF event pathway to file a Certificate of Service is Bankruptcy → Other Miscellaneous Events → Certificate of Service.

10. **L.R. 9013-2 – Expedited or Emergency Matters.** The change has been made to redefine "Expedited basis" or "emergency basis" as any hearing to be held less than twenty-one (21) days after the filing of the motion on which the hearing is requested in order to remain consistent with other provisions found in the Local Rules.

L.R. 9013 – Expedited or Emergency Matters.

A. **Motion For Expedited or Emergency Hearing**

A request for hearing on an expedited or emergency basis must be made by written motion, setting forth the reason the matter should be considered on an expedited or emergency basis. The movant must contact the Courtroom Deputy to obtain a hearing date and time. "Expedited basis" or "emergency basis" is defined as any hearing to be held less than twenty-one (21) ~~14~~ days after the filing of the motion on which the hearing is requested.

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