

2022 PROPOSED LOCAL RULE REVISIONS

U.S. Bankruptcy Court, Eastern District of Missouri

Below are the proposed revisions to the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Missouri that will become effective on December 1, 2022, if approved. The Local Rules with revisions are detailed below. These revisions regard:

1. Clarifying that Chapter 7 trustees may make payments of small dividends under the Federal Rules of Bankruptcy Procedure and the Court's Local Rules. (L.R. 3010)
2. Providing debtors in Chapter 13 cases the flexibility to request a suspension of plan payments one time during the life of their bankruptcy case. (L.R. 3015-6)
3. Clarifying the process for requesting a new summons in an adversary proceeding. (L.R. 7004)
4. Eliminating any confusion over the status of an adversary proceeding when an underlying bankruptcy case has been dismissed. (L.R. 7041)
5. Removing the requirement that the moving party must submit an "Entry of Default" when seeking default judgment. (L.R. 7055)
6. Creating a rule to provide uniform procedures in removed actions. (L.R. 9027)
7. Revising the statement required before a judge's signature line on proposed orders in Chapter 11 cases to reflect current practice. (L.R. 9050)
8. Revising the rule on negative notice to procedures to account for the addition of Local Rule 3015-6. (L.R. 9061)

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1. **L.R. 3010 – Small Dividends and Payments.** The change was made to clarify that Chapter 7 trustees may make payments of small dividends under the Federal Rules of Bankruptcy Procedure and the Court's Local Rules.

L.R. 3010 – Small Dividends and Payments

Under Fed. R. Bankr. P. 3010, trustees in Chapter 7 cases in the Eastern District of Missouri are authorized to pay creditors dividends in an amount less than \$5.00.

2. **L.R. 3015-6 – Chapter 13 Suspension of Monthly Trustee Payments.** The rule provides the debtor with the flexibility to request a suspension of plan payments one time during the life of their bankruptcy case.

L.R. 3015-6 – Chapter 13 Suspension of Monthly Trustee Payments

A. Request for Suspension of Monthly Trustee Payments

The debtor may file a motion requesting a suspension of monthly payments to the Chapter 13 Trustee for a maximum of three consecutive months one time during the life of the case. The motion may be filed on twenty-one days' negative notice pursuant to the procedures found in L.R. 9061(A). If the motion is granted and the debtor is subject to a wage order, it is the debtor's responsibility to cause the affected employer to stop deduction of monthly payments to the Chapter 13 Trustee for the months when monthly payments to the Chapter 13 Trustee are suspended and to make certain that monthly payments to the Chapter 13 Trustee recommence on time after the suspension.

B. Treatment of Funds Remitted to Trustee Despite Court-Ordered Suspension

The debtor is not entitled to the return of any funds that the Chapter 13 Trustee receives during the suspension period. The Chapter 13 Trustee will disburse or hold the funds received during the suspension period as otherwise required by the Bankruptcy Code, these Local Rules, Chapter 13 plan terms, or order of the Court.

C. Treatment of Suspended Plan Payments

An order granting a suspension of monthly payments to the Chapter 13 Trustee does not eliminate the payments. The suspended monthly payments to the Chapter 13 Trustee will be added on to the end of the plan. Entry of an order granting of a suspension of monthly payments to the Chapter 13 Trustee is without prejudice to the rights of any secured creditor to seek a lift of the stay or other appropriate relief.

D. Limitation on Suspension of Monthly Trustee Payments

Any approved suspension of monthly payments to the Chapter 13 Trustee applies only to regular monthly payments to the Chapter 13 Trustee under the plan and not to either (a) a debtor's obligation to pay a tax refund or other lump sum(s) required under a confirmed plan to the Chapter 13 Trustee or (b) a debtor's obligation with regard to any direct payment(s) to creditors including, without limitation, continuing mortgage payments on a debtor's residence, post-petition real property lease payment(s), co-debtor debt paid by any co-debtor(s), assigned domestic support obligations, and/or post-petition domestic support obligations.

3. **L.R. 7004 - Summons.** The change was made to clarify the process for requesting a new summons in an adversary proceeding.

L.R. 7004 – Summons.

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B. Service of Summons

The plaintiff must serve the summons as required by Fed. R. Bankr. P. 7004(a)-7004(h). The plaintiff must file a certificate of service of the summons at least fourteen days before the hearing date on the summons. The reverse side of the summons contains the certificate of service. A summons is only valid for service for seven days following its issuance (Fed. R. Bank. P. 7004(e)). ~~If the 7-day period has passed without the summons being served, the plaintiff must file a motion requesting that the summons be reissued.~~ If the summons becomes stale or the plaintiff requires the issuance of a new summons, the plaintiff must file a motion requesting the issuance of an alias or pluries summons as applicable.

4. **L.R. 7041 – Dismissal of Adversary Proceeding.** The introduction of this rule eliminates any confusion over the status of an adversary proceeding where the underlying bankruptcy case has been dismissed.

L.R. 7041 – Dismissal of Adversary Proceeding

Twenty-one days after the dismissal of a bankruptcy case, the Court will close any pending related adversary proceeding in which a final judgment has not been entered and no appeal remains pending, unless a party files a motion seeking continuation of the adversary proceeding within that twenty-one day period.

5. **L.R. 7055 – Default Judgement.** The portion of the rule requiring the debtor to submit an “Entry of Default” is removed. It is not appropriate for the debtor to submit this form.

L.R. 7055 – Default Judgment

A. Clerk’s Entry of Default.

A plaintiff seeking the Clerk of Court’s entry of default must follow the procedures set forth in Fed. R. Bankr. P. 7055. To obtain the Clerk of Court’s entry of default, the Court requires the filing of the following documents:

1. Request for Clerk of Court’s entry of default; **and**
2. Affidavit supporting entitlement to entry of default.; **and**
3. ~~Director’s Form B2600 (found through the link to Official Forms on the Court’s web site) for entry of default.~~

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6. **L.R. 9027 – Removal.** The rule provides uniform procedures for removal actions. The Court has received many removal actions over the past couple of years. Each time the Court receives a removal action, we refer to the District Court’s local rules in the absence of our own rule. The District Court rule does not account for the commencement of an adversary proceeding via removal action. Providing the rule creates uniformity amongst removal actions and gives much-needed guidance to the bar.

L.R. 9027 – Removal

A. Commencing an Adversary Proceeding via Notice of Removal

A party commencing an adversary proceeding with a Notice of Removal must:

1. Pay the prescribed filing fee for a new adversary proceeding;
2. File an original notice of removal;
3. File proof of filing the notice of removal with the Clerk of the applicable federal or state court from which the action is removed and proof of service of a notice of removal and consent to entry of judgment form (Local Form 32) upon all parties;
4. File a copy of all process, pleadings, orders and other documents then on file in the court from which the action is removed, including a copy of that court’s docket sheet;
5. File a completed adversary proceeding cover sheet (Local Form 18) and corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1; and
6. File a completed consent to entry of judgment form (Local Form 32) if proper service related to the underlying claim or cause of action has not been effected prior to the filing of the Notice of Removal with the Court.

B. Statements in Notice of Removal or Related Filings Regarding Consent to Entry of Order or Judgment in Core Proceeding

1. A notice of removal must contain a statement that, upon removal of the claim or cause of action, the party filing the notice does or does not consent to entry of final orders or judgments by the Bankruptcy Court. If the notice of removal lacks that statement, then the party filing the notice of removal has waived the right to contest the Bankruptcy Court’s authority to enter final orders or judgments in the adversary proceeding, unless otherwise ordered by the Bankruptcy Court.

2. Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, must file a statement that the party does or does not consent to entry of final orders or judgments by the Bankruptcy Court (Local Form 32) within fourteen days after the filing of the notice of removal or as otherwise ordered by the Bankruptcy Court. If no such statement is filed, the party has waived the right to contest the Bankruptcy Court's authority to enter final orders or judgments in the adversary proceeding, unless otherwise ordered by the Bankruptcy Court.

7. **L.R. 9050 – Proposed Orders.** The change was made to reflect the Court's current practice.

L.R. 9050 – Proposed Orders

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D. Service in Chapter 11 Cases

In all Chapter 11 cases, the Court will ordinarily direct the prevailing party to serve the order and file a certificate of service. All orders in Chapter 11 cases must contain the following statement immediately before the judge's signature line:

"No later than ~~7~~ **two (2) business** days after the date of this order, (name of party) is directed to serve a copy of the order on all parties listed below and is directed to file a certificate of service no later than 24 hours after service."

8. **L.R. 9061 – Negative Notice Procedures.** The change was made to account for the addition of Local Rule 3015-6

L.R. 9061 - Negative Notice Procedures.

A. Negative Notice.

Certain motions or pleadings may be considered by the Court without setting a hearing date if appropriate notice and opportunity to object to the requested relief are provided to necessary parties ("Negative Notice"). Negative Notice may be used for the following types of motions or pleadings:

1. motions to compel abandonment of property;
2. motions to avoid liens on exempt property;
3. motions to approve the Trustee's final report;
4. motions to dismiss a Chapter 7, 12 or 13 case;
5. motions to convert a case, but not from a Chapter 12 or 13 case;

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6. fee applications, except in Chapter 11 cases;
7. objections to claims in Chapter 13 cases;
8. motions for continuation of utility service/adequate assurance of payment under 11 U.S.C. §366; and
9. in Chapter 13 cases, in addition to applicable items included above, the following motions:
 - a. motions to retain a tax refund;
 - b. motions to incur debt; **and**
 - c. motions to sell or refinance property.; **and**
 - d. **motions requesting a suspension of plan payments pursuant to L.R. 3015-6.**
10. Other matters may be set on Negative Notice as authorized by the Court.