

## **2024 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, 2024, if approved. The revisions are detailed below and regard:

1. Clarifying that the deadline to object to a debtor's discharge or the dischargeability of a debt is extended only if it hasn't already expired, and directing parties to file a motion seeking to extend the deadline to object in instances where the deadline has expired. (L.R. 1009)
2. Requiring the debtor to identify the amount paid, date paid and the manner in which funds were tendered when bringing plan payments current in relation to a Motion to Reinstate following a dismissal for failure to make plan payments. (L.R. 1017-3)
3. Raising the attorney fee amounts for debtor's counsel in Chapter 13 cases. (L.R. 2016-3)
4. Allowing debtors in Chapter 13 cases to repay mortgage arrears over the life of their Chapter 13 plan, instead of the shorter of forty-eight (48) months or the duration of the plan. (L.R. 3015-2)
5. Reducing the amount of time debtors have to turnover collateral to twenty-one (21) days from forty five (45) days, but calculating this deadline from the confirmation of a plan (original or amended) rather than from the petition date. (L.R. 3015-2)
6. Standardizing confirmation procedures in Subchapter V cases in this district. (L.R. 3017.2)
7. Excepting claims for sewer and real estate tax debt from the direction that the Trustee will cease distribution on the claim of a creditor that obtains an order for relief from the automatic stay to foreclose on collateral and cease payment on all claims secured by the collateral against which relief from the automatic stay is granted. (L.R. 3021)
8. Conforming the language must be contained in all orders granting relief from the automatic stay in Chapter 13 cases to the proposed change to L.R. 3021. (L.R. 4001-1)
9. Providing non-individual debtors or debtors in possession the option of designating a responsible individual who will be responsible for the duties and obligations of the debtor or debtor-in-possession and whom parties may direct their communications to. (NEW L.R. 4002-1)

10. Providing the filer of a motion to avoid liens with direction as to what forms to use when filing the motion and options to effect proper service when a non-individual whose lien is sought to be avoided does not have a registered agent in Missouri. (L.R. 4003-2)
11. Establishing a process and procedure for individual debtors filing motions to recover tangible personal property in response to the change to Fed R. Bankr. P. 7001(a) effective December 1, 2024, which allows a debtor to seek this relief my motion instead of adversary proceeding. (**NEW** L.R. 4003-3)
12. Explicitly stating that any affidavit in support filed by a plaintiff seeking the Clerk of Court's entry of default must be notarized by a notary public holding a current and valid commission. Plaintiffs also have the option of filing a declaration in support under penalty of perjury pursuant to 28 U.S.C. § 1746. (L.R. 7055)
13. Clarifying the response deadlines when a matter is set for hearing that may have otherwise been set on Negative Notice. (L.R. 9061)
14. Reducing the Negative Notice period to file a response to a motion to retain automobile insurance proceeds in a Chapter 13 case to (14) days after service. (L.R. 9061)
15. Adding two matters to the list of matters that will ordinarily be considered without hearing, unless directed otherwise. (L.R. 9062)

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

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### **E. Extension of Deadline for Objection to Discharge**

The deadline to object to a debtor's discharge or the dischargeability of a debt will be extended by sixty (60) days from the date of the amended schedules and/or matrix only for newly added creditors **if the original deadline to object to a debtor's discharge or the dischargeability of a debt has not expired. If the original deadline has expired, parties wishing to object should file a motion seeking to extend the deadline to object.**

#### **Rationale:**

- The rule currently provides for an automatic sixty-day extension of the time to object to discharge or dischargeability. However, FRBP 4007(c) requires that an extension be sought by a party before the deadline expires, and FRBP 9006(b)(3) allows no variation. FRBP 4004(a)-(b) are almost as restrictive, and FRBP 9006(b)(3) applies almost as clearly, referring to FRBP 4004(a) but not to (b). We can fix this issue by clarifying that the deadline is extended only if it hasn't already expired, and direct parties to file a motion seeking to extend the deadline to object in instances where the deadline has expired.

**L.R. 1017-3 – Motions to Reinstate Following Dismissal on Trustee’s Motion to Dismiss for Failure to Make Plan Payments.**

**A. Time, Content, and Service**

A Chapter 13 debtor will have fourteen (14) days after entry of an order granting the Trustee’s motion to dismiss for failure to make plan payments in which to file a motion to reinstate and set aside dismissal and to pay funds to the Trustee to bring payments current as of the date of the debtor’s motion. The motion must state whether the case was previously dismissed and reinstated and must provide dates of any prior dismissals and orders of reinstatement. The motion must also recite that the debtor has paid funds to the Trustee to bring payments current as of the date of the debtor’s motion, **list the amount and date tendered, and detail the manner in which the funds were tendered.** The debtor must serve a copy of its motion on the Trustee, all creditors and parties in interest who have filed a proof of claim, and all entities that have filed a request for notice. No later than fourteen (14) days after service of the motion, the Trustee must file a response to the motion, stating whether the Trustee consents or opposes reinstatement. Upon submission of the Trustee’s consent, the case may be reinstated without hearing. Absent a compelling reason, the Court will enter an order without hearing after receipt of the Trustee’s response.

**Rationale:**

- The landscape of payments has changed significantly since this rule was written such that the requirement that the debtor "has paid" funds to the Trustee is problematic. In responding to these motions, the Trustee interpreted "has paid" as meaning the Trustee had received the funds. Previously, most payments were mailed to a local PO box such that the Trustee's office could wait a few days after the motion was filed to see if payments were received, then respond to the motion. Now, payments that are mailed go to a PO box in a different city and mail delivery overall is slower such that it takes five or frequently more days for the Trustee to receive a mailed payment. Electronic payments are more popular and can be verified within a day or two after tender. If the rule were amended to require the debtor to identify the amount paid, the date paid and the manner in which funds were tendered, the interpretation of "has paid" could shift to tender of the payment rather than receipt of the payment. Reciting this specific information, rather than a general phrase that the debtor has tendered some undetermined amount of money on an undetermined date, gives enough assurance of payment that the motion can be reviewed upon receipt.

**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 must disclose which fee election option the attorney elects by using the “Attorney Fee Election Form” event in the CM/ECF

system. Such fee election event must 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" are, without application to the Court, permitted to be paid attorneys' fees, including expenses, not to exceed ~~\$4,800.00~~ **\$5,800.00** for cases filed on or after December 1, ~~2018~~ **2024** (plus the filing fee if the filing fee is advanced).
2. **Fee Application Option.** Attorneys for debtors in Chapter 13 cases who elect the "Fee Application Option" are permitted to be paid, without application to the Court, an initial fee in an amount not to exceed ~~\$3,000.00~~ **\$3,600.00** for cases filed on or after December 1, ~~2018~~ **2024** (plus the filing fee if the filing fee is advanced). All other fees will be allowed to the debtor's attorneys who elect the "Fee Application Option" only on application filed in accordance with L.R. 2016-1(B).

**B. Service of Applications.**

Service must be in accordance with L.R. 2016-1(B)(2).

**C. Fees upon Pre-confirmation Case Dismissal.**

If a debtor's attorney wishes to receive fees in a case that has been dismissed prior to confirmation of a chapter 13 plan, the attorney must, within fourteen (14) days of the entry of the dismissal order, (1) file an application for an order allowing the fees as a Bankruptcy Code § 503(b) expense, and (2) obtain an order directing the trustee to hold funds pending resolution of the fee application. If the fee sought, including fees paid prior to filing of the case, does not exceed ~~\$1,100.00~~ **\$1,300.00**, the attorney may use the Court's Short Form Attorney Fee Application and may file the application as a motion without hearing pursuant to L.R. 9062. If the fee sought, including fees paid prior to filing of the case, exceeds ~~\$1,100.00~~ **\$1,300.00**, the application must comply with the form, notice and hearing requirements of L.R. 2016- 1.

**Rationale:**

- The last flat fee increase that was approved by the Court became effective on December 1, 2018. Inflation has increased by 24.38% since that time. The average income for a household of 1 in Missouri has increased by 28.27% during that period. The average income for a household of 2 has increased by 30.6%. It is reasonable for the compensation approved for attorneys who represent debtors to be periodically reviewed and adjusted based upon economic considerations.
- These increases are reasonable considering the length of time since the last approved fee increases, the increase in the economic capability of average debtors, and the increase in inflationary pressures on attorneys who represent debtors in Chapter 13.
- If enacted, these increases will necessitate changes to the model Chapter 13 plan.

## **L.R. 3015-2 – Chapter 13 Plans – Plan Contents**

### **A. “Reasonable Time” to Cure Defaults under Bankruptcy Code § 1322(b)(5).**

The duration to cure pre-petition arrearages pursuant to Bankruptcy Code § 1322(b)(5) is any length of time not to exceed the life of the plan. ~~Absent a showing of cause or the written consent of the mortgagee, the “reasonable time” referred to in Bankruptcy Code § 1322(b)(5) will not exceed the shorter of forty-eight (48) months or the plan duration. Consent of the mortgagee to any other time period must be in writing, filed with the Court, and served on the Trustee prior to the hearing on confirmation of the plan.~~

### **B. Turnover of Collateral**

When a Chapter 13 plan states that the debtor will surrender collateral to a creditor, the debtor must release the collateral to the creditor within ~~forty-five (45)~~ **twenty-one (21)** days of the date of the ~~order confirming the plan filing of the petition~~. To surrender collateral, the debtor will make the collateral available to the creditor during reasonable hours and at a reasonable location. The debtor and creditor should cooperate in surrendering and recovering the collateral.

#### **Rationale:**

- This change will help Chapter 13 debtors succeed in bankruptcy by allowing them to repay mortgage arrears over the life of their Chapter 13 plan, which is usually 60 months in the case of Chapter 13 plans that include auto loans. This change will have a significant impact on debtors with high mortgage arrearage claims and will also help to offset the increased cost of Chapter 13 plans for homeowners due to other secured claims which are paid at the *Till* interest rate. If enacted, this rule change will also require modification of the model Chapter 13 plan in paragraph 3.5(a). This paragraph currently limits the duration to pay arrears on § 1322(b)(5) claims to 48 months or the life of the plan, whichever is less.
- Currently the rule requires the debtor to surrender collateral to a creditor 45 days after the date the petition is filed if the plan provides for surrender of collateral. Not infrequently, the original plan does not provide for surrender, but an amended plan does provide for surrender of collateral. Unless that amended plan is filed shortly after the petition date, the debtor cannot comply with the rule. Alternatively, the original plan may provide for surrender, but prior to confirmation the debtor changes its mind and amends the plan to retain the vehicle. It makes better sense to run the clock from confirmation of a plan (original or amended) with a shorter amount of time to comply, rather than 45 days from the petition date.

## **L.R. 3017.2 – Subchapter V Requirements**

**A.** Unless otherwise ordered by the Court no disclosure statement is required in a case filed under Subchapter V. Additionally, no Statement of Current Monthly Income (Official Form 122B) is required in a case filed under Subchapter V.

**B.** ~~Counsel must file and serve a Motion to Establish Confirmation Procedures within seven (7) days following the filing of the Subchapter V plan and submit a proposed~~

order in substantial conformity with (LF to be effective 12/1/24). The Court may consider the motion without a hearing pursuant to L.R. 9062.

- C. Counsel must file and serve a Notice of Confirmation Hearing and Related Deadlines in substantial conformity with (LF to be effective 12/1/24) after the Court grants the Motion to Establish Confirmation Procedures.**

**Rationale:**

- Parties in Subchapter V cases have shown they could use more direction related to confirmation procedures.

**L.R. 3021 – Distribution on Claims in Chapter 13 Cases**

**A. Distribution Following Relief from the Automatic Stay**

1. **Certain Lienholders Not Entitled to Share in Subsequent Distributions.** In a Chapter 13 case, if a creditor obtains an order for relief from the automatic stay of Bankruptcy Code § 362 to foreclose on collateral, the Trustee will cease distribution on the claim of such creditor and cease payment on all claims secured by the property against which relief from the automatic stay is granted (except claims for sewer service or real estate tax debts) until such time as:

...

**Rationale:**

- LR 3021(A) and 4001-1 provide that in a Chapter 13, if a secured creditor receives relief from the automatic stay to foreclose on collateral, the Trustee will cease disbursements on all claims secured by that collateral absent certain future events. The rules are intended to prevent situations where creditors who are paid the secured portion of their claim from liquidation of the collateral continue to receive additional payments from the Chapter 13 Trustee as secured creditors. Many years ago, the following problem became apparent:
  - Mortgage creditors who receive relief from stay sometimes modify the mortgage rather than foreclose. The Trustee is never notified either because there is no pre-petition arrearage claim or because the pre-petition arrearage has been satisfied by the modification. If the Trustee has stopped payments on MSD or real estate tax claims because of this rule, the debtor will end the case owing the MSD or tax debts.
- To avoid this situation, the Trustee changed procedures to keep making payments on MSD and tax debts even if other secured creditors received relief from the stay. This is fairly safe in that even if the property is sold and the Debtor's attorney fails to object to the MSD or tax claims, these entities are likely to refund overpayments to either the Trustee or the debtor. This rule change would specifically except claims for sewer and real estate tax debt from the direction to stop payment.

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

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**C. Content of Motion for Relief from the Automatic Stay.**

**1. Motion for Relief from the Automatic Stay to Foreclose on Collateral.**

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b. Chapter 13 Cases. In a case filed under any chapter in which the movant is seeking to foreclose its collateral, the following procedures apply:

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iv. ***Order Granting Relief from the Automatic Stay – Effect on Secured Claims.*** All order granting relief from the automatic stay in a Chapter 13 case must contain the following language:

The Trustee is directed to discontinue payment on all claims secured by the property against which relief from the automatic stay is granted **(except claims for sewer service or real estate tax debts)** in this Order. The Trustee is directed to resume payment on such claims on notification pursuant to L.R. 3021(A)

**Rationale:**

- This is a conforming change to the language required by this rule made necessary by the above change to L.R. 3021(A).

**L.R. 4002-1 – Designation of Responsible Individual (NEW)**

A. Any debtor or debtor-in-possession that is not an individual may file an application with the Court and submit a proposed order to the applicable orders mailbox appointing a natural person to be responsible for the duties and obligations of the debtor or debtor-in-possession. The order must identify such person by name and include the person's address, telephone number, and position within the organization. If the duties are to be divided among two or more individuals, the responsibilities of each must be specified. The application and order must be filed with the petition, or promptly thereafter.

B. Any notice or application filed under subparagraph (a) of this rule must be served on any trustee appointed in the case, on counsel for (or if there is no counsel, the members of) any committee appointed in the case, on the United States Trustee, on any party who has requested notice pursuant to Bankruptcy Rule 2002(i), and on the L.R. 9013-3(D) Master Service List in applicable cases.

**Rationale:**

- A more restrictive version of this rule is used in other districts. Our version of the rule is permissive. The objective is to enhance communication between the parties and create a more orderly administration of the case by providing the opportunity for non-individuals to designate a responsible individual from the outset of the case.

**L.R. 4003-2 - Motion to Avoid Liens under Bankruptcy Code § 522(f)(1).**

**A. Content and Service.**

All motions to avoid liens must contain:

1. a specific description of the property subject to the lien avoidance action; and
2. a description of the documents giving rise to the lien.

A specific description of the property is not necessary if the debtor does not have a listing of the property and the debtor can demonstrate an attempt to obtain that information in writing from the creditor at least fourteen (14) days prior to filing the motion. The motion must be served **in accordance with L.R. 9013-1(A) on the Trustee and the creditor whose lien is sought to be avoided.** All motions to avoid judicial liens on real property should be filed using the Local Form “Motion to Avoid Judicial Lien” found on the Court’s web site. All motions to avoid **liens nonpossessory security interests under Bankruptcy Code § 522(f)(1)(B) should be filed using the Local Form “Motion to Avoid Nonpossessory, Nonpurchase-Money Security Interest” on the Court’s web site. All motions of either type must be served on the registered agent of any non-individual whose lien is sought to be avoided. If the non-individual whose lien is sought to be avoided does not have a registered agent in Missouri, the motion may be served upon (a) another person or entity designated or permitted by law to receive service of process, including a registered agent in another jurisdiction, or (b) another person or entity in a manner that complies with Fed. R. Bankr. P. 7004.**

**Rationale:**

- This change gives clear direction to the filer what they must do if a registered agent does not exist or cannot be located. It is possible that the non-individual does not have a registered agent. The motion must be served on the Trustee and the creditor whose lien is sought to be avoided.
- Motions to avoid liens must be served on the registered agent of any non-individual whose lien is sought to be avoided. In cases where the non-individual whose lien is sought to be avoided does not have a registered agent or the registered agent cannot be located, we are providing the filer with direction and options to effect proper service.
- All motions should be filed using the applicable Local Form found on the Court’s web site.

**L.R. 4003-3 – Motion by Individual Debtor to Recover Tangible Personal Property Under § 542(a) (NEW)**

All motions by individual debtors to recover tangible personal property must include a specific description of the property to be recovered. The motion must be served in accordance with L.R. 9031-1(A). All motions must be served on the registered agent of any non-individual creditor. If the non-individual creditor does not have a registered agent in Missouri, the motion may be served upon (a) another person or entity designated or permitted by law to receive service of process, including a registered agent in another jurisdiction, or (b) another person or entity in a manner that complies with Fed. R. Bankr. P. 7004.

**Rationale:**

- FRBP 7001(a) is being amended effective December 1, 2024, to permit an individual debtor to pursue recovery of tangible personal property by motion rather than an adversary proceeding. This is somewhat comparable to FRBP 4003(d), which allows avoidance of a lien by motion. This rule is being implemented to standardize the process of recovering tangible personal property similar to the process of avoiding a lien by motion.

**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:

1. Request for Clerk of Court’s entry of default; and
2. Affidavit **or declaration under penalty of perjury pursuant to 28 U.S.C. § 1746** supporting entitlement to entry of default.

**The Any affidavit or declaration** must contain:

- a. Date of issuance of summons;
- b. Statement of whether the Court fixed a deadline for filing an answer or motion, or whether the 30 or 35 day limit applies;
- c. Date of service of the complaint;
- d. Date of filing of affidavit or return of service;
- e. Statement that no answer or motion has been received within the time limit fixed by the Court;
- f. Statement that the defendant is not in the military service (as required by the Soldier’s & Sailor’s Civil Relief Act, 50 U.S.C. App. § 521); and
- g. Statement that the defendant is not an infant or an incompetent as required by Fed. R. Civ. P. 55(b)(1)).

**Any affidavit must be notarized by a notary public holding a current and valid commission. Any declaration must comply with the requirements of 28 U.S.C. §**

**1746.** If the plaintiff is entitled to entry of default, the Clerk of Court's office will complete the entry of default and return a copy of the entry of default to the plaintiff.

### **B. Motion for Default Judgment**

Any motion for default judgment must be accompanied by (1) the Clerk of Court's entry of default using Director's Form B 2600 (found through the link to Official Forms on the Court's web site), and (2) ~~an affidavit~~ **one or more affidavits** in support of the motion. The plaintiff filing the motion for default must submit a proposed order via the Judge's e-mail (see the Procedures Manual for the Judges' e-mail addresses) at the time the motion is filed. The affidavit in support of the motion must contain the following:

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#### **Rationale:**

- Attorneys have been submitting affidavits without notarization or other documents in support. Clerk's Office staff believe it is beneficial to explicitly include a requirement that notarization by a notary public holding a current and valid commission is required. They also suggest allowing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746 as an option in lieu of a notarized affidavit.

### **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"). **If a party sets a motion for hearing that may have otherwise been set on Negative Notice, any response must be filed no later than seven (7) days before the date of hearing pursuant to L.R. 9013-1(B).**

Negative Notice may be used for the following types of motions or pleadings:

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**11. motions to retain automobile insurance proceeds in Chapter 13 cases.**

#### **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 will have twenty-one (21) days after service to file a response to the motion or pleading. The response time for **objections to claims in Chapter 13 cases and** motions for continuation of utility service/adequate assurance of payment under 11 U.S.C. §366 will be thirty (30) days. **The negative notice period to file a response to a motion to incur debt relating to an automobile in a Chapter 13 case or a motion to retain automobile insurance proceeds in a Chapter 13 case is fourteen (14) days after service.** The respondent must 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 is fourteen (14) days after service.~~

**Rationale:**

- Parties have been setting motions for hearing that may be set on negative notice and using the response deadline in the negative notice procedures. Even though the motion could have been set on negative notice, it was not. Therefore, these procedures are inapplicable and L.R. 9013-1 – Motion Practice is controlling.
- Currently, a motion to purchase an automobile has a fourteen-day negative notice option to allow a debtor to quickly obtain transportation. Such motions frequently involve situations in which the debtor's vehicle has been totaled or stolen such that a motion to retain insurance proceeds to fund some or all of the cost is also necessary, but that motion has a longer notice option such that the automobile purchase is delayed. Allowing motions to retain automobile insurance proceeds to share the fourteen-day negative notice option would promote the reason for that option.

**L.R. 9062 – Matters Without Hearing.**

Unless otherwise directed, the Court will ordinarily consider the following matters without hearing. Nothing, however, precludes any party from requesting that any of these matters be set for hearing. Copies of any motion or application that will not be set for hearing under this Rule must be served on all entities entitled to notice as specified in the Federal Rules of Bankruptcy Procedure or in these Rules. Any response must be filed and served immediately.

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**23. Motions to increase plan base in Chapter 13 cases.**

**24. Motions to establish confirmation procedures in Subchapter V cases.**

**Rationale:**

- These motions do not generally require a hearing.