

FREQUENTLY ASKED QUESTIONS ¹
regarding
Local Rules for the U.S. Bankruptcy Court
Eastern District of Missouri
and Electronic Case Filing (ECF)
(as of June 5, 2008)

I.	<u>Case Commencement</u>	
	L.R. 3015-3 Chapter 13 Plans - Forms and Filing	1
	L.R. 1009 Amended Matrix	1
	L.R. 1009 Amended Matrix - ECF Manner of Filing	1
	L.R. 1009 Amended Schedules, Statement of Affairs, and Matrix that Remove Old Information	2
II.	<u>Format of Pleadings</u>	
	L.R. 9050 Proposed Orders - Submission to the Court	2
	L.R. 9050 Proposed Orders - Circulating Proposed Orders	3
	“So Ordered” Orders	3
	L.R. 9050 Orders and Notices of Breach of Stipulation	3
III.	<u>Motions, Responses, and Notice of Hearing</u>	
	L.R. 4001-1(D) Responses to Motions - General Denials	3
	L.R. 9060(B) & (C) Notice of Hearing - Amount of Notice Required for Particular Motions	4
	Notice of Hearing - Amount of Notice When Not Specified	4
	L.R. 9013-1(B) & (D) Failure to File a Response - Default Procedures	4
	L.R. 9060 Failure to Give Proper “Warning” Language on Notice of Hearing	5
	L.R. 9013-1(D) Failure to File a Response - Court Appearances	5
	L.R. 1017-3 Motions to Reinstate After Dismissal for Failure to Make Plan Payment ..	5
	L.R. 4001-1 Motions for Relief - Value of Property	6
IV.	<u>Local Forms</u>	
	Forms vs. Rules	6
	Access to Local Forms	6
V.	<u>Exhibits and Exhibit Summary</u>	
	L.R. 9040(A) Exhibit Summary	6
	When is an Exhibit Summary Necessary	6

¹ These Frequently Asked Questions and Answers are provided as a tool for bankruptcy practitioners. The information provided is accurate as of the date released. These materials should not be used as a substitute for reference to the Bankruptcy Code or the Federal or Local Rules of Bankruptcy Procedure.

	Exhibit Summary as Separate Document or Last Page of Main Document	7
	L.R. 9040 Service of Exhibits When Exhibit Summary is Used	7
	L.R. 9040 Exhibits with Reaffirmation Agreements	7
	L.R. 7016(A) & L.R. 9040(C) Exchange & Numbering of Exhibits	7
VI.	<u>Chapter 13 Issues</u>	
	L.R. 2015-2(A) Necessity and Format of Wage Orders	8
	L.R. 3015-3(B) Signatures on Amended Plans	8
	L.R. 1009 Motion to Amend Plan	8
	L.R. 1009 Order of Filing Motion to Amend Plan and Amended Plan	8
	L.R. 1017-1(E) Amended Plans Following Trustee Motion to Dismiss	9
VII.	<u>Attorney Issues</u>	
	L.R. 2091 Withdrawal of Counsel - Chapter 13 Attorney Fees	9
	L.R. 2091 Compensation of New Chapter 13 Counsel	9
	L.R. 2090(B) Pro Hac Vice	10
VIII.	<u>Adversary Issues</u>	
	L.R. 7055(A) Motion for Entry of Default	10
IX.	<u>ECF Issues</u>	
	Signatures in ECF	11
	Signatures on Reaffirmation Agreements	11
	Mandatory Electronic Filing	11
	Secured Payment Methods for Credit/Debit Card Use in ECF	11
	Multiple Cases	11
	Compatibility with U.S. District Court ECF Filing Procedures	11
	E-mail Addresses for All ECF Users in a Specific Case	12

**United States Bankruptcy Court
Eastern District of Missouri**

FREQUENTLY ASKED QUESTIONS
regarding
Local Rules and Electronic Case Filing

I. Case Commencement

Chapter 13 Plans - Forms and Filing. L.R. 3015-3

Under ECF, can the Chapter 13 Plan be filed as Part of the Voluntary Petition event or must they be filed through the “File a Plan” event?

Answer: The “File a Plan” event must be used for filing all plans, even when the plan is filed as part of a complete petition package at commencement of a case. However, attorneys using a petition preparation software may now upload the plan through the Case Upload feature.

Amended Matrix. L.R. 1009

Does the debtor have to update the matrix after notice of commencement has been sent if the debtor learns of a corrected address for a creditor, and if so, does the debtor have to pay to file the creditor’s corrected address?

Answer: Yes, because of the debtor’s continuing duty to maintain an accurate list of creditors, the debtor must update the matrix even after the notice of commencement has been issued. No fee for amending the matrix is required when the amendment is a change of address for a creditor.

Amended Matrix. ECF Manner of Filing

What must be filed to amend the matrix under ECF?

Answer: To amend the matrix under ECF, the filer must do two things. First, the filer must file a corrected matrix in PDF format using the “Amended Creditor Matrix” event under the “Other Miscellaneous” link in the Bankruptcy menu. The Amended Matrix and verification of matrix must list ONLY the new or corrected information. Second, the filer must update the ECF System by adding any new creditors to the case. There are three ways which new creditors can be added to the ECF database by an attorney. An attorney may add creditors to the database directly through the Amended Creditor Matrix event. An attorney has two different options to add creditors through the Creditor Maintenance link under the Bankruptcy menu which are “Enter

individual creditors,” and “Upload a creditor matrix file.” Uploading a duplicate matrix may result in creditors appearing more than once on the matrix if the creditor’s name or address is different than on the original matrix. Any changes needed to existing creditor records must be completed by the Court as attorneys are not allowed modify existing records.

Because L.R. 1009(A) requires the filing of a memorandum identifying the change(s) made by any amendment to the schedules, the change should be summarized in a memorandum attached to or part of the PDF document which contains the amended matrix.

Amended Schedules, Statement of Affairs, and Matrix that Remove old Information

After electronically filing an amended schedule or matrix that changes a creditor’s address or name, how does the old information get removed from the case?

Answer: Attorneys are not permitted to remove information from the electronic case record, such as creditor names. Any information sought to be changed, must be done by filing an amended matrix, schedule, etc. and by following the procedures in L.R. 1009. Based upon the information in the amended document and the explanatory cover memorandum, the Court will amend or remove old creditor addresses from the System. If a creditor is to be entirely removed from a case (i.e. not a change of address), a new matrix is not necessary but the attorney must file a detailed memorandum explaining the change that is requested. A fee is required to remove or add a party to the matrix. In Chapter 7 cases, a mandatory notice is required to be filed when adding creditors to schedules.

II. Format of Pleadings

Proposed Orders. L.R. 9050 - Submission to the Court

How are proposed orders to be submitted to the Court?

Answer: All proposed orders are to be submitted by e-mail to the e-mail box established for the assigned judge. Detailed instructions are included in the ECF Administrative Procedures section of the Procedures Manual. All proposed orders are to be transmitted by e-mail when the motion is filed, except proposed orders on matters to be set on negative notice. Orders on motions filed on negative notice are to be submitted only after expiration of the time for response or hearing.

Proposed Orders. L.R. 9050 Circulating Proposed Orders

When pleadings are filed electronically through ECF, can the proposed order be attached to the motion and circulated among the parties through the notice of electronic filing?

Answer: No. Proposed orders should not be attached or otherwise filed with the motion.

“So Ordered” orders

Can attorneys use the “So Ordered” provisions for motions filed electronically, and if so, what steps should be followed?

Answer: No. The “So Ordered” provisions on motions are no longer necessary since the Court implemented the use of Judge electronic endorsement stamp.

Orders and Notices of Breach of Stipulation. L.R. 9050

If the debtor and creditor enter into a stipulation for payments in resolution of a motion for relief from the automatic stay and the debtor breaches his duty to pay under the stipulation, how does the creditor’s attorney notify the Court of the breach and how does the attorney tender the proposed order granting relief from stay?

Answer: Attorneys should use the ECF “Notice of Default” event under the “Other Miscellaneous Events” link in the Bankruptcy menu to file a letter advising of the breach. The attorney should thereafter send the proposed order and a short explanation, if necessary, by e-mail to the appropriate Judge’s e-mail box.

III. Motions, Responses and Notice of Hearing

Responses to Motions. General Denials. Local Rule 4001-1(D)

Local Rule 4001-1(D) prohibits “general denials” in response to motions for relief. If attorneys continue to file answers to motions in the form of general denials, what is the movant's remedy? When should a motion for sanctions be filed?

Answer: Attorneys should use good judgment in bringing to the Court’s attention when responses to a motion are insufficient to enable the parties to confer in good faith about the substance of the motion. Local Rule 2093(B) imposes a duty to confer in good faith in advance of appearing before the Court and L.R. 4001-1(E) imposes a specific duty to confer on motions for relief. Whether sanctions are appropriate and what other procedures may apply will be determined on a case by case basis. The Court will balance an attorney’s efforts to represent his or her client against allegations of delay and unnecessary litigation.

Notice of Hearing. Amount of Notice Required for Particular Motions 9060 (B) & (C)

Is there a “default” local rule for the amount of notice that must be given before any hearing?

Answer: No. The Local Rules do not contain a “default” provision and no single local rule states the amount of notice to be given before hearing on all motions. The Federal Rules usually specify how much notice must be given before a hearing (e.g. Fed. R. Bankr. P. 2002, etc.). Specific Local Rules, however, such as L.R. 4001-1 for motions for relief, specify the amount of notice for a particular matter. Local Rule 9061 also specifies the amount of notice (10, 20 or 30 days) required for matters heard on negative notice.

Notice of Hearing. Amount of Notice when Not Specified

If the local rules do not specify how much notice must be given for a motion, for example, for a motion to compel the debtor to turnover property, how much notice must be given of the hearing?

Answer: If the time period for hearing is not specified in the Federal Rules or Local Rules, attorneys should contact the Courtroom Deputy.

Failure to File a Response. Default Procedures

Can the default procedures of L.R. 9013-1(B) and (D) apply if no response is filed five days before the hearing?

Answer: The default procedures apply as follows:
On matters that are set for hearing, a default will be entered if no response is filed five business days before hearing.

On matters set on Negative Notice, if proper certification has been made, defaults will be entered if no response has been filed, and these matters will not be set for hearing.

Note: The specific facts of each case will dictate the result. In one instance, the judge may sign and have the order entered prior to the hearing date if there is no timely response; while in another instance, the judge may wait until after the hearing date to sign and enter the order. Attorneys should check with the appropriate Courtroom Deputy.

Failure to Give Proper “Warning” language on Notice of Hearing. L.R. 9060

Will the Court grant a default if the notice of hearing does not contain the “warning” language required by L.R. 9060?

Answer: This question asks for a legal determination that may be decided differently depending on the circumstances.

Failure to File a Response. Court Appearances. L.R. 9013-1(D)

Does the movant/applicant/claim objector have to appear for hearing if the respondent fails to file a response? What happens if the movant is not present but the respondent appears for the hearing without having filed a response?

Answer: Attorneys need not appear for a hearing if the respondent does not file a response. If the respondent appears without having filed a response and the movant is not present, the Court will continue the hearing on the motion.

Motions to Reinstate After Dismissal for Failure to Make Plan Payment. L.R. 1017-3

When must the debtor send payment to bring plan payments current support of a motion to reinstate following the Trustee's motion to dismiss for failure to make plan payments?

Answer: The debtor has ten days after entry of an order granting dismissal for failure to make plan payment to **BOTH** file a motion to reinstate and set aside the dismissal order, **AND** tender funds to the Trustee in sufficient amount to bring the debtor current as of the date of the debtor's motion. The Trustee's response is thereafter due, ten days from the date of service of the debtor's motion.

Motions for Relief - Value of Property. L.R. 4001-1

When a movant files a motion for relief from stay and states that there is no equity in the property, do the rules require the movant to state the value the movant believes the property to have?

Answer: No, the rules do not require the movant to plead any particular details other than as stated in L.R. 4001-1(C). This list is not exclusive, so movant may state the value of the collateral if seeking relief for lack of equity. Under 11 U.S.C. § 362 (g)(1), the movant has the burden of establishing lack of equity. The Local Rules do not, however, impose a particular pleading requirement concerning valuations.

IV. Local Forms

Forms vs. Rules

What should attorneys do if the Local Forms seem to impose different requirements than the Local Rules?

Answer: Just as the Bankruptcy Code controls the Rules, and Federal Rules control Federal Forms, the Local Rules control the Local Forms when there is a conflict.

Access to Local Forms

Where are the Local Forms on the Court's website? Are they fillable?

Answer: The Forms are located on the “**Forms**” link on the Court’s homepage. Many of the forms are not fillable, but can be downloaded in a Word or WordPerfect format.

V. Exhibits & Exhibit Summary

Exhibit Summary. L.R. 9040(A)

The Local Rules generally require an Exhibit Summary to be used instead of attaching exhibits to most motions, pleadings, or claims if the attachment is more than two pages long.

When is an Exhibit Summary Necessary

Is an Exhibit Summary necessary if the documents that would be described on the Exhibit Summary are described within the text of the motion? In such instance, the Exhibit Summary would be a duplicate of the content of the motion.

Answer: The Exhibit Summary is to be filed as required by the Rules even if a substantial portion of the exhibit summarized is already described within the text of the motion.

Exhibit Summary as Separate Document or Last Page of Main Document

When filing electronically, should the Exhibit Summary be the last page of the main PDF document or should it be done as a separate PDF and as an attachment to the main document?

Answer: In ECF, the Exhibit Summary can be the last page of the main document or attached as a separate document.

Service of Exhibits when Exhibit Summary is Used. L.R. 9040

When and how does a respondent get copies of exhibits if an Exhibit Summary is used?

Answer: When an Exhibit Summary is used, copies of the actual exhibits must be provided within 3 business days of any request and without charge to the party requesting the exhibits. If the matter remains in dispute, copies of the exhibits are to be submitted (not filed) with the Court three (3) business days prior to hearing. NOTE: Some creditors find it easier to serve copies of the exhibits at the beginning of the motion rather than awaiting a request for them. The 3 business day guideline does not preclude the filer from sending the documents at an earlier time.

Exhibits with Reaffirmation Agreements

Reaffirmation Agreements often incorporate the terms of the original contract and usually state the original contract is attached and its terms are incorporated by reference. How does the Exhibit Summary rule (L.R. 9040) impact Reaffirmation Agreements? If the original contract isn't scanned and filed with the Reaffirmation Agreement, will this affect the validity of the reaffirmation agreement terms?

Answer: An Exhibit Summary can be used with a Reaffirmation Agreement; however, whether failure to attach the actual contract affects the validity of the Reaffirmation Agreement is a legal question with the possibility for different outcomes depending on the circumstances of the case. As a general rule, the reaffirmation agreement must contain all terms being reaffirmed.

Exchange & Numbering of Exhibits. L.R. 7016(A) & L.R. 9040(C)

How are exhibits to be marked and how are they to be submitted for hearing?

Answer: Rule 7016(A) provides the best direction for marking exhibits. This approach should be followed even if the exhibits relate to a motion or contested matter and not an adversary.

- Plaintiffs/Movants are to mark exhibits in Arabic numerals;
- Defendants/Respondents are to use letters.
- Exhibits are to be indexed using an index following Local Form 20; and
- Exhibits are to be **submitted (not filed)** with the Court **three (3) business days prior to trial.**

NOTE: Trial exhibits in an adversary are to be exchanged with the parties **not later than ten (10) days prior to the adversary trial.** In all other instances, whether in an adversary or other proceeding, exhibits must be provided within 3 business days of request for them and if the matter remains at issue for hearing, the exhibits are to be submitted to the Court three days prior to hearing.

VI. Chapter 13 Issues

Necessity and Format of Wage Orders. L.R. 2015-2(A)

Why is a motion to enter wage order necessary in Chapter 13 cases when the Court automatically grants the motion and enters the order tendered? Could the order be entered without a motion, particularly if the plan refers to payment by wage order? How are wage orders to be submitted to the Court under ECF, and what information must they contain?

Answer: Because not all Chapter 13 cases involve a wage order, requests for wage orders are necessary in individual cases. This Court generally enters an order

only in response to a request, and except for oral motions made in open Court, such requests must be filed as a motion. The Court recommends use of the Wage Order Program through CM/ECF. This is done as a text entry in CM/ECF, where the attorney enters the appropriate information regarding the debtor's employer, amount to be paid and frequency of payment. CM/ECF subsequently creates an order that corresponds to the motion. Only in instances where an unrepresented debtor is unable to use the Court's CM/ECF system should a debtor file a PDF version of a Motion for Wage Order. Only in those instances is a proposed order necessary. Wage orders should be submitted by e-mail to the appropriate e-mail box for the assigned Judge.

Signatures on Amended Plans. L.R. 3015-3(B)

This rule states all Chapter 13 plans and amended plans are to be signed by the debtor “unless otherwise authorized by the Court.” When will the Court authorize a plan to be filed without the debtor’s signature?

Answer: The Judges will permit plans without signature if the change in the plan is a perfunctory matter that does not change the nature of the plan. NOTE: In ECF, although documents may be filed without bearing a signature, the original document must be signed unless an exception such as this permits filing with only the attorney signature.

Motion to Amend Plan

When does a motion to amend a plan need to be filed?

Answer: A motion to amend a plan needs to be filed when a plan proponent seeks to amend a plan that has been confirmed.

Order of Filing Motion to Amend Plan and Amended Plan

When filing an amended plan and a motion to amend the plan, which PDF needs to be filed first?

Answer: The amended plan should be filed first, and the motion to amend the plan should be linked to the amended plan.

Amended Plans following Trustee Motion to Dismiss. L.R. 1017-1(E)

This Local Rule allows the debtor to bypass the motion to amend procedures of L.R. 3015-5 when filing an amended plan in response to a Trustee’s motion to dismiss for lack of feasibility.

- When the debtor is filing an amended plan in response to the trustee’s motion to dismiss for lack of feasibility, does the debtor have to include a motion to amend? Can the attorney use the limited service option under 3015-5 B. 2?

Answer: L.R. 1017-1(E) allows the debtor to file an amended plan (post-confirmation) without having to file a motion to amend. However, the plan must be served on all creditors and parties in interest unless grounds exist to use the limited service option of 3015-5(B)(2).

- If the Trustee doesn't file a motion to dismiss for lack of feasibility but the debtor wants to fix a feasibility problem, does the debtor still need a motion to amend? Does any motion to amend have to have "warning" language of 9060(B) in it?

Answer: If the debtor needs to fix a feasibility problem but the trustee has not objected, the debtor must file a motion to amend, amended plan and revised budget as set forth in 3015-5 and must serve these documents and a notice of hearing on all parties unless grounds for limited service exist.

VII. Attorney Issues

Withdrawal of Counsel. Chapter 13 Attorney Fees. L.R. 2091

How are fees handled for debtor's attorney who withdraws in a Chapter 13 case?

Answer: Local Rule 2091 requires the Chapter 13 Trustee to cease payment to an attorney who has been allowed to withdraw, absent other order from the Court.

Compensation of New Chapter 13 Counsel. L.R. 2091

When a new attorney takes over a flat fee Chapter 13 case, can the new attorney bill hourly? What is the preferred way to have prior counsel withdraw and new counsel enter? Is a Motion to Substitute Attorney of Record with terms in the proposed order appropriate?

Answer: L.R. 2091 permits an attorney to petition not to be bound by a prior attorney fee agreement. A motion to substitute with detailed terms may be used.

Pro Hac Vice. L.R. 2090(B)

This rule details procedures for admission pro hac vice and use of local counsel. Is a pro hac vice motion required in an adversary if the attorney is admitted in the main case? Does the attorney have to be admitted pro hac vice for every case in which the attorney is appearing?

Answer: A pro hac vice motion is required in each case and each proceeding. This requirement is consistent with current practice and with District Court practice.

VIII. Adversary Issues

Motion for Entry of Default. L.R. 7055(A)

In order to obtain a default judgment, one must first obtain a Clerk's Entry of Default. Certain allegations must be made regarding service, lack of response, military status and competency to obtain this Entry from the Clerk of Court. The movant must then file a Motion for Default Judgment. This Motion requires the Clerk's Entry of Default as well as a supporting affidavit. The affidavit in support of the Motion for Default Judgment requires many of the same allegations already plead to obtain the Clerk's Entry of Default.

Why is it necessary to provide the same information in the second affidavit in support of the Motion for Default Judgment when it is part of the affidavit necessary to obtain the Clerk's Entry of Default?

Answer: The content of the affidavit in support of the Default Judgment is not necessarily identical to the content of the affidavit in support of the Clerk's Entry of Default. The affidavit for the Clerk's Entry must include the enumerated items stated in the Procedures Manual (essentially the fact of service, no response and entitlement to default). The Affidavit in Support of the Motion, however, is likely to include such additional attested facts as the amount of damages or other proof necessary to establish the case and need not include the information in support of the Clerk's Entry. Often, the plaintiff attaches the Clerk's Entry and its Affidavit in Support to the Motion for Default so there is no need to "re-allege" the same facts.

How is the plaintiff supposed to know that the defendant is not in the military service or that the defendant is not incompetent? Are these additional questions that must be asked at 341 meetings or must the plaintiff undertake discovery to determine the answers to these two questions?

Answer: The defendant's military service and competency can be determined at the 341 meeting or by other means, or the plaintiff may allege the necessary facts "to the best of Plaintiff's knowledge and information . . ."

IX. ECF Issues

Signatures in ECF

How are signatures handled on consent motions and reaffirmation agreements?

Answer: Signatures are handled as outlined in the CM/ECF Administrative Procedures section of the Procedures Manual. All consenting signature blocks are

required on the consent motion when filed electronically. On reaffirmation agreements, the debtor's and creditor's signatures are required.

Mandatory Electronic Filing

Is ECF filing mandatory?

Answer: ECF filing is mandatory for all attorneys.

Secured Payment Methods for Credit/Debit Card Use in ECF

Can Pay Pal or another commercial secured payment method be used when paying filing fees through ECF?

Answer: No, ECF does not allow use of Pay Pal or similar services, but it has its own internet credit card security method. This is www.pay.gov. See the Court's Public Notice dated November 23, 2006.

Multiple Cases

When filing multiple cases at one time, will an attorney need to enter the credit card information for each case, or can fees for multiple cases be paid at one time at the end of the session?

Answer: Fees for multiple cases can be paid at one time at the end of a filing session.

Compatibility with U.S. District Court ECF Filing Procedures

What compatibility is there between ECF at the Bankruptcy Court and the District Court? If an attorney is registered for electronic filing with the Bankruptcy Court, does the attorney have to register with the District Court? Can the same password and login be used?

Answers: The basic case management computer systems used by the Bankruptcy and District Courts are the same. Thus, many of the features used in the programs, such as attaching PDF documents or selecting related documents, are the same. Attorneys must submit a separate registration form to each court. The login and password for each court will be different, although attorneys can control their passwords using the "Utilities" feature in ECF.

E-mail Addresses for All ECF Users in a Specific Case

Can an attorney get a list of all the e-mail addresses for attorneys and trustees using ECF?

Answer: When filing a document electronically, the filer is able, before the document is filed, to see which parties will receive the document via e-mail from the Court's CM/ECF system. This allows the filer to accurately craft the certificate of service prior to filing the document. Simply log into the Court's CM/ECF system and click on "Utilities" at the top of the screen. On the next screen, beneath "Miscellaneous," click on "Mailings" On the third screen,

click on “Mailing Info for a Case.” Enter the case number into the field that appears, and click on “Submit.” The screen after this will provide a list of all parties that will receive filed documents from the Court’s CM/ECF system by e-mail in the case. It will also provide a list of all parties that will require manual notice.