

Rule and Form Changes

Chief Justice's Year End Report

- ▶ “As for the lawyers, most will readily agree—in the abstract—that they have an obligation to their clients, and to the justice system, to avoid antagonistic tactics, wasteful procedural maneuvers, and teetering brinksmanship. I cannot believe that many members of the bar went to law school because of a burning desire to spend their professional life wearing down opponents with creatively burdensome discovery requests or evading legitimate requests through dilatory tactics. The test for plaintiffs’ and defendants’ counsel alike is whether they will affirmatively search out cooperative solutions, chart a cost-effective course of litigation, and assume shared responsibility with opposing counsel to achieve just results.”

December 1, 2015 National Form Changes

- ▶ The Forms Modernization project began in 2008. The aim of the project was to update forms to make them easier for debtors to complete and to work with enhancements to CM/ECF to gather additional statistical data about bankruptcy cases.
- ▶ Substantially all of the Official Forms and Directors forms have been revised and corresponding changes made in CM/ECF.
- ▶ If you use Best Case or similar software, make sure you are using the latest version.
- ▶ Form conversion chart and other resources are available on the USCourts.gov website.

December 1, 2015 Local Rule Changes

- ▶ Technical amendments were made to 1009-1, 1017-2, 3015-4, 4001-5, and 4008-1 to reference the new form number or form name.
- ▶ Exhibit A to 3015-3 was amended to require service of the exhibit on governmental units charged with collecting a DSO.
- ▶ 3070-1 was amended to conform with the recent holding in Harris. The rule generally provides that funds on hand are returned to the debtor after conversion. The debtor can consent to a different distribution, which may result in counsel receiving outstanding fees owed.
- ▶ Rules 7008-1, 7012-1, and 7016-1 were added and 9027-1 was amended to address the Stern line of cases. The rules now require the filing or responding party in an adversary or removal to state whether they consent to the entry of final orders or judgments by the bankruptcy judge.
- ▶ 9037-1 was amended to require parties filing multiple redaction requests to coordinate the filing with the Clerk.

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Local Form Changes

- ▶ All local court forms have been updated to reflect the December 1 form number and name changes.
- ▶ The court is rolling out additional internal form changes to simplify certain routine notices and orders.
- ▶ An effort is being made to reduce the number of deficiency notices being issued. The deficiency notices are also being revised to consolidate the number of notices and clarify the content of the notices.

December 1, 2016 Changes

Chapter 15

- ▶ Rules 1010 and 1011 are amended to eliminate reference to chapter 15. The existing version of the rules are inconsistent on whether a summons is required in a foreign “main” proceeding.
- ▶ Rule 1012 consolidates the response to a chapter 15 petition into one rule. Objections to the filing must be filed seven days before the date set for the hearing on the petition.
- ▶ Rule 2002(q) sets contents for the notice on a petition for the recognition of a foreign proceeding.

Notices Related to Debtor's Principal Residence

- ▶ Rule 3002.1 is amended resolve a conflict in case law. The amendment clarifies that the duty to provide 3002.1 notices applies even if there is no prepetition default to cure and regardless of whether post petition payments will be made directly by the debtor or through the plan. The amendment also clarifies that payment change notices do not need to be sent after the stay is lifted unless ordered by the court.

Noticing Changes

- ▶ Rule 9006 is amended to eliminate the additional three days to respond to documents served electronically.

Stern Amendments

- ▶ Amendments are proposed to Federal Rules 7008, 7012, 7016, and 9027.
- ▶ The amendments are similar to recent amendments to the local rules and may eliminate the need for new local rules 7008-1, 7012-1, 7016-1, and amendments made to 9027-1.
- ▶ The amendments generally require a statement of whether the filing or responding party consents to the entry of a final order by a bankruptcy court regardless of whether the matter is core or non-core. Amendments to 7016 also allow the bankruptcy court to decide on its own motion or a party's motion, whether to hear and determine a proceeding, issue proposed findings of fact, or take some other action.

National Chapter 13 Plan

Next Generation of CM/ECF

- ▶ Timeline- Unknown
- ▶ Rollout- Phased
- ▶ Preparation. Pacer started making changes August 11. You will need to upgrade your Pacer account to use NextGen. You can select your own username and password for Pacer and use these same credentials in NextGen. There will be one account per user and you can store credit card information in the account. There will be enhanced security measures that will require stronger passwords. The initial rollout of NextGen will allow for users to have “single sign-on,” meaning that your credentials in South Carolina will allow you to sign-on and view dockets for other federal courts and file in those courts if you are licensed in that jurisdiction.

Other Tips



Top Attorney Deficiencies for 2015

- ▶ Filing Fee Has Not Been Paid 428
- ▶ Review to Process Order Deadline Not Set 407
- ▶ Electronic Event and Image Do Not Match 371
- ▶ Incorrect Hearing Date/Time/Location 264
- ▶ Insufficient Order 223
- ▶ Filing Not in Accordance With Court Procedures 155
- ▶ No Signature 136
- ▶ Filing Not in Accordance With Official Forms 131
- ▶ Motion Not Filed in Accordance With Rule 9013-4 115
- ▶ No or Insufficient Certificate of Service 99

Tips from the Teams

- ▶ Motion for Hardship Discharge should include Exhibit C to Local Rule 3015-5.
- ▶ Update local forms to reflect that Pamela Simmons-Beasley is the trustee in Judge Duncan's cases.
- ▶ Over-noticing. Teams have noted that noticing has been overly broad when noticing has been delegated. For example, a 362 motion may be served on the debtor, debtor's counsel, and the trustee but the resulting order is then served by the creditor on all parties to the case.
- ▶ Remove the court from your service list. The court does not need copies of documents on the docket.
- ▶ Some judges do not want a cover page. On proposed orders, leave enough room at the bottom for the judge to add a signature.

Tips from the Teams

- ▶ Remove identifying header or footer information from proposed orders and instructional footnotes.
- ▶ There is a new event to allow debtor's counsel to submit documents related to the death of a debtor. "Restricted Document Pursuant to FRBP 9037" allows counsel to file these documents that will only be viewable by court users and the trustee.
- ▶ Keep form orders simple. For example, Judge Duncan prefers proposed orders on objections to claim be fashioned in a manner similar to the order used by the case trustee.
- ▶ Pay the filing fee at the filing of the case.
- ▶ Tab through the "review to process" order deadline. You are not able to change this deadline but you need to tab when prompted so that the deadline populates correctly and goes in the Case Administrators workbox.

Noticing

- ▶ DeBN
- ▶ Possible changes to Fed. R. Bankr. P. 9036.