Revisions
to the
Local Bankruptcy Rules

United States Bankruptcy Court
for the
Eastern District of Virginia

Effective March 1, 2001

(Ver. 2/9/01)

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* New Rule

RULE 1006-1 FEES: INSTALLMENT PAYMENTS

(D) ***Failure to Pay Installment***

(2) ***Dismissal of Case:*** Except as provided in LBR 1017-3, the Clerk shall issue an order of dismissal in any case where the initial installment payment required under FRBP 1006 and paragraph (B) of this Local Bankruptcy Rule has not been received by the next business day after the petition was filed. In any case where a subsequent installment payment has not been received by the due date, the Clerk shall issue an order of dismissal.

Comments

1006-1 This change is necessary because of the addition of LBR 1006-1 to LBR 1017-3. [Change effective 3/1/01.]

RULE 1017-3 SUSPENSION OF AUTOMATIC DISMISSAL

Rule to Show Cause in Lieu of Dismissal in Certain Cases: Notwithstanding the provisions of LBR 1006-1, 1007-1(A), 1007-3 (C), 2003-1 (B), 3015-1 (G), 3015-2 (C) and 3070-1 (C), the Clerk shall not enter an order dismissing the debtor's case if the case was previously converted from any other chapter of Title 11 or if the debtor was a debtor in another case pending at any time within 12 months preceding the filing of the present case. In such a case, the Clerk shall, in lieu of dismissal, issue a rule to show cause to the debtor and set the rule for a hearing.

Comments

1017-3 LBR 1006-1 has been added to the LBRs covered under LBR 1017-3. [Change effective 3/1/01.]

RULE 2090-1 ATTORNEYS—ADMISSIONS TO PRACTICE

(I) ***Professional Ethics:*** The ethical standards relating to the practice of law in this Court shall be the ~~Canons of Professional Ethics of the American Bar Association and the Virginia State Bar~~ Virginia Rules of Professional Conduct now in force and as hereafter modified or supplemented.

Comments

2090-1 (I) A reference to the Virginia Rules of Professional Conduct, which became effective January 1, 2000, has been substituted for the reference to Virginia State Bar canons. [Change effective 3/1/01.]

RULE 3015-2 CHAPTER 13 PLAN REQUIREMENTS

(C) ***Dismissal of Case for Defects with Chapter 13 Plan and Related Motions and Notice of Chapter 13 Plan and Related Motions***

(1) ***Dismissal of Case for Failure to Timely File or Distribute Plan and Notice, Except as Provided in LBR 1017-3.***

(a) ***Clerk to Issue:*** Except as provided in LBR 1017-3, the Clerk shall issue an order of dismissal in any chapter 13 case not meeting the timeliness of filing requirements of subdivisions A (2), A (3), or A (4) of this Local Bankruptcy Rule.

(2) ***Dismissal of Case Upon Denial of Confirmation, Except as Provided in LBR 1017-3:*** Except as provided in LBR 1017-3, if the Court denies confirmation of the debtor's original or subsequently modified Chapter 13 Plan and Related Motions, the Clerk is directed to issue an order dismissing the chapter 13 case unless, within ten (10) days after denial of confirmation:

Comments

3015-2 (C) (1) (a) and (C) (2) The amendment to these provisions correspond to the amendment made to LBR 1017-3. [Change effective 3/1/01.]

RULE 6004-1 SALE OF ESTATE PROPERTY

~~In any matter involving title to real property,~~ All motions or complaints for sale of real property or any interest therein shall contain the legal description of said real property sufficient to effect a proper conveyance thereof. Orders approving the sale of property of the estate or any interest therein shall comply with
LBR 9022-1(D).

Comments

6004-1 The cross-reference to LBR 9022-1 (D) has been added to remind the practitioner of the requirement that orders approving the sale of real estate or any interest therein, like all orders, must stand alone without reference to external documents, e.g., the order should not purport to approve the sale of the real estate or any interest therein "in accordance with the terms of the contract attached to the motion" but should state the essential terms of the sale, e.g., "to John and Joanna Doe for the price of $173,000." [Change effective 3/1/01.]

RULE 6007-1 ABANDONMENT

(C) ***Order of Court for Approval of Abandonment:*** Orders for approval of abandonment of property of the estate shall comply with LBR 9022-1 (D).

Comments

6007-1 (C) This new provision conforms to the amendment to LBR 9022-1 (D). [Change effective 3/1/01.]

RULE 7007-1 FINANCIAL DISCLOSURE

(A) ***Required Disclosure:*** A nongovernment corporation, partnership, trust, other similar entity that is a party to, or appears in, an adversary proceeding, or other proceeding specified in this Local Bankruptcy Rule, in this Court shall:

(1) File a statement that

(a) identifies all its parent, subsidiary, or affiliate entities (corporate or otherwise), that have issued stock or debt securities to the public, and also identifies any publicly held entity (corporate or otherwise) that owns 10 percent or more of its stock, or

(b) states that there is nothing to report under LBR 7007-1 (A) (1) (a); and

(2) file a supplemental statement containing such additional information as may be from time to time required by the Judicial Conference of the United States or this Court.

(3) If the proceeding is not assigned to the Electronic Case Filing System, the statement shall be filed in duplicate; otherwise, the statement shall be filed consistent with the Electronic Case Filing System requirements approved by the Court.

(B) ***Time for Filing:*** A statement or form required by LBR 7007-1 (A) shall be filed within fourteen (14) days of the party's first appearance, pleading, application, motion, response, or other request addressed to the court, except that the statement or form required by LBR 7007-1 (A) shall be filed simultaneously with any request for emergency relief such as a motion for temporary restraining order. A supplemental statement or form shall be filed promptly upon any change in the circumstances that LBR 7007-1 (A) requires the party to identify.

(C) ***Statement Delivered to Judge:*** The Clerk shall deliver a copy of the LBR 7007-1 (A) disclosure to each judge acting in the adversary proceeding or other proceeding specified in this Local Bankruptcy Rule.

Comments

The Committee on Codes of Conduct of the Judicial Conference of the United States is undertaking to develop a national rule requiring parties in district and bankruptcy courts to disclose their corporate parents. Pending completion of a national rule that addresses this issue, LBR 7007-1 has been promulgated for the purpose of establishing the required interim financial disclosure. The statement referenced in LBR 7007-1, Financial Interest Disclosure Statement form, is attached as new Exhibit 6. [New Rule effective 3/1/01.]

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EXHIBIT 6

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
_____ Division

In re:

Debtor(s) Case No.

Plaintiff(s) Chapter

v.

Defendant(s) Adversary No.

FINANCIAL INTEREST DISCLOSURE STATEMENT

Pursuant to Local Bankruptcy Rule 7007-1 of the Eastern District of Virginia and to enable Judges to evaluate possible disqualification or recusal, the undersigned counsel for _____ in the above captioned action, certifies that the following are parents, trusts, subsidiaries and/or affiliates of said party that have issued stock or debt securities to the public or publicly held entities that own ten percent or more of the stock of the said party:

_____

_____

☐ None *[*Check if applicable*]*

_____ _____

Date Signature of Attorney or Litigant
Counsel for _____

Note: **<u>This form is to be filed with the Clerk of the Court. If the proceeding is not assigned to the Electronic Case Filing System, the statement shall be filed in duplicate; otherwise, the statement shall be filed consistent with the Electronic Case Filing System requirements approved by the Court.</u>**

Rev. 2/9/01

RULE 7026-1 DISCOVERY

(L) ***Expert Disclosure:***

(2) ***Timing of Mandatory Disclosure:***

(b) ***Contested Matters Except Relief from Stay:*** In contested matters, the disclosures required by FRBP 7026 (a) (2) shall be made by the movant or applicant, as the case may be, within thirty days prior to the hearing date; then by the respondent or objecting party, ~~within~~ on the later of ten days after the movant or applicant presents ~~their~~ the required disclosures, or on the date that a response to the motion or application is due.

Comments

7026-1 (L) (2) (b) Under the current rule provision, the respondent or objecting party may not have had an affirmative duty to make the required disclosures if the movant or applicant did not make any such disclosures. The amended rule provision makes clear that the expert disclosure requirement of a respondent or objecting party is independent of the requirement imposed on a movant or applicant. [Change effective 3/1/01.]

RULE 7056-1 SUMMARY JUDGMENT

Motions for summary judgment are governed by LBR 9013-1. Where the non-moving party is *pro se*, the notice of hearing on the motion shall comply with LBR 9013-1 (M) (3).

Comments

LBR 7056-1 is new and provides a cross-reference to LBR 9013-1 (M) (3), which also is new. [New Rule effective 3/1/01.]

RULE 9013-1 MOTIONS PRACTICE

(M) ***Giving Notice of Motion or Hearing***

(3) ***Where summary judgment is requested against pro se party:*** The notice of any motion seeking summary judgment in which the non-moving party is *pro se* shall conform substantially to Official Form 20A and, in addition, shall set forth the requirement for a response in substantially the following form:

NOTICE

A motion for summary judgment is a request that one or more issues in a case be decided without holding a trial. Motions for summary judgment are governed by Rule 56, Federal Rules of Civil Procedure. Summary judgment may be granted if (a) the material facts are not genuinely disputed and (b) based on those facts, the party asking for summary judgment is entitled to judgment as a matter of law. If you wish to oppose the motion, you must file with the court and serve on the other party, a written response at least two [*or five*] business days prior to the hearing. **If you fail to file a timely written response to the motion, the court may**

assume you do not oppose the motion and may grant the motion without holding a hearing. If you disagree with any of the facts stated by the other party, you must include with your response sworn statements from yourself or other knowledgeable witnesses supporting your version of the facts. A sworn statement may take the form either of an affidavit or a declaration signed under penalty of perjury. Any documents you want the court to consider should be identified in, and attached to, the sworn statements. If you are unable to obtain sworn statements supporting your position, you must file a sworn statement stating why you are unable to obtain such statements at this time.

[Ed.Note: The text in "bold" will be underscored and unbolded in the final version of the rule incorporated into the LBRs.]

Comments

9013-1 (M) (3) The additional requirements with respect to summary judgment motions against *pro se* parties are included to comply with *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), and to conform with changes in the Local Rules of Practice of the United States District Court for the Eastern District of Virginia. [Change effective 3/1/01.]

RULE 9019-1 SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

Rule 83.6, Settlement and Alternative Dispute Resolution, Local Rules of Practice of the United States District Court for the Eastern District of Virginia, applies in adversary proceedings before the Court. For purposes of the Settlement and Alternative Dispute Resolution provisions set out at Rule 83.6, references to: the "court" are to the bankruptcy court; "judge" are to bankruptcy judges assigned to the case; and "Chief Judge" are to the Chief Judge of the District Court.

Comments

LBR 9019-1 cross references Rule 83.6 of the Local Rules of Practice of the United States District Court for the Eastern District of Virginia, which makes that rule applicable to adversary proceedings in cases before the Court. [New rule effective 3/1/01.]

RULE 9022-1 COURT ORDERS

(D) ***Form and Content:*** Any proposed order shall be sufficient in description to stand alone without reference to any motion, pleading or other paper~~.~~ (except for exhibits attached to the order itself). Orders authorizing the sale of real estate or otherwise affecting title to real estate (e.g., abandonments, avoidance of transfers, avoidance or imposition of liens, or adjudication of lien property) shall contain a legal description sufficient to pass title. Orders for sale of property of the estate or any interest therein shall state the identity of the purchaser and the price to be paid unless sale is to be at public auction, in which event the order shall state the date, time, and place of the auction.

Comments

9022-1 (D) Since the need for an order affecting title to real estate to contain a proper legal description is not limited to orders approving sale of real estate or any interest therein, the requirement has been placed at LBR 9022-1. A cross-reference has been added to LBR 6004-1 as well to remind the practitioner of the requirement that orders approving the sale of real estate or any interest therein, like all orders, must stand alone without reference to external documents, e.g., the order should not purport to approve the sale of the real estate or any interest therein "in accordance with the terms of the contract attached to the motion" but should state the essential terms of the sale, e.g., "to John and Joanna Doe for the price of $173,000." [Changes effective 3/1/01.]

EXHIBIT 1 CHAPTER 13 PLAN AND RELATED MOTIONS

SECTION B – PROVISIONS OF PLAN

B-10. TREATMENT OF CLAIMS.

~~g. The debtor will not sell real property without an order from the court.~~

B-11. OTHER PROVISIONS OF THE PLAN. ___ None

The debtor will not sell real property without an order from the court. ☐ *[*Check if Applicable*]*

Whether Exhibits Not Otherwise Prescribed by the Court Should be Made Part of and Appended to the Local Bankruptcy Rules

The Standing Committee on Local Bankruptcy Rules (Standing Committee) considered and established the following recommended standard, which would be applied to assessing the appropriateness of adding exhibits to the Local Bankruptcy Rules (LBR): Unless otherwise determined by the Court, when an exhibit is referenced specifically either in the text of an LBR or by title in the "Comments" to an LBR, the exhibit should be appended to the LBRs. Otherwise, an order, procedure, or form would be referenced at the Court's Internet website. An order, procedure, or form also would be made available, for reference purposes, at each division of the Court. Under this recommended standard, the following Exhibits will not be appended to the LBRs: Exhibits 6 and 7 (referenced in Comments to LBR 1007-1 only) and Exhibit 8 (LBR 2003-1 (C) refers generally only to a form that is to be approved by the Clerk. The Court directed that Exhibits 5 and 9 be retained as exhibits to the LBRs although they do not meet the technical standards otherwise approved by the Court.

LBR 1007-1, at Comments: Exhibits 6 and 7 have been deleted as exhibits to the LBRs. The Instructions for Creditor Matrix Diskette, Cover Sheet for List of Creditors form and Request for Waiver form are set out at the Court's Internet website under "Bankruptcy Forms." [Changes effective 3/1/01.]

LBR 2003-1 (C), at Comments: Exhibit 8 has been deleted as an exhibit to the LBRs. The Notice of Rescheduled Meeting of Creditors form is set out at the Court's Internet website under "Bankruptcy Forms." [Change effective 3/1/01.]

LBR 9013-1, at Comments: Exhibit 9 has been re-numbered Exhibit 7 [Change effective 3/1/01.]

EXHIBITS

Comments

The bankruptcy forms included in the following exhibits are available at the Court's Internet web site http://www.vaeb.uscourts.gov and can be accessed by clicking the "Bankruptcy Forms" button on the Court's Internet home page. The forms are in Adobe Acrobat format.