

PROPOSED REVISIONS TO LOCAL BANKRUPTCY RULES AND FORMS CORRESPONDING TO PROPOSED REVISIONS TO LR 2100 – LR 2300

This document contains proposed revisions to the December 1, 2019, version of the Local Bankruptcy Rules for the District of Oregon corresponding to proposed revisions of District Court Local Rules pertaining to bankruptcy ([click here](#) for those proposed revisions). The revisions in this document are proposed in addition to the previous revisions published for public comment ([click here](#) for those proposed revisions).

Text proposed to be added is double-underlined, and text proposed to be deleted is ~~struck through~~. Comments intended to explain the proposals follow each proposed change.

Please [click here](#) to submit comments concerning the proposed revisions or e-mail comments to LBRcomments@orb.uscourts.gov. Any comments must be received on or before October 21, 2020 to be considered. After reviewing any comments, provided the corresponding Local Rules are adopted, the court will post the final revised rules which will take effect on December 1, 2020, unless otherwise noted.

Rule 1014-2. Venue—Change of

A motion to change the venue of a case or adversary proceeding must be filed with the movant's first pleading or motion or later upon a showing of good cause.

Comment. The name of this proposed new rule is prescribed by the Uniform Numbering System for Local Bankruptcy Rules. Current LR 2100-1(c)(1), which requires that certain motions be filed with the party's first pleading or motion, is proposed for repeal, with the understanding that the same deadline would be considered for adoption in the LBRs.

Rule 5011-1. Withdrawal of Reference Referral.

LBR 9033-1 applies.

A motion for withdrawal of the district court's referral to the bankruptcy court of a case or proceeding must be filed with the party's first pleading or other motion or later upon a showing of good cause.

Comment. The proposed LR amendments change “reference” to “referral.” Below, [LBR 9033-1](#) is separately proposed for repeal. See explanation of proposed [LBR 1014-2](#) for discussion of proposed repeal of LR 2100-1(c)(1) and adoption of LBRs requiring that certain motions be filed with a party's first pleading or motion.

Rule 5011-2. Abstention.

A motion for abstention must be ~~accompanied by an affidavit demonstrating compliance with 28 U.S.C. § 1334(e) and LR 2100~~ filed with the party's first pleading or motion or later upon a showing of good cause.

Comment. There is no general LBR requirement that motions be supported by an affidavit, and there is no reason to require an affidavit for an abstention motion but no other motion type. A similar affidavit requirement appears in current LR 2100-5(b), which is proposed for repeal. See explanation of proposed [LBR 1014-2](#) for discussion of proposed repeal of LR 2100-1(c)(1) and adoption of LBRs requiring that certain motions be filed with a party's first pleading or motion.

Rule 7001-1. Adversary Proceedings—General.

[...]

Cross-references:

[...]

- Jury Trial – LBR 9015-1 and ~~LR 2100-8~~ [LR 2100-6](#).

[...]

Comment. Current LR 2100-8, addressing jury trials, is proposed to be restated in LR 2100-6.

Rule 7007-1. Motion Practice—Adversary Proceedings.

[...]

(b) Brief Supporting Motion, Opposition Statement, or Reply.

[...]

(3) Timing Requirements.

[...]

- (B) **Reply.** No reply may be filed, except in support of a motions for summary judgment or to withdraw referral, which must be filed and served no later than 14 days after the filing of the opposition.

Comment. Because a referral-withdrawal motion will be decided by a district judge, who might not set oral argument, a reply should be permitted. For the same reason, proposed revised LR 2100-5(a)(3), addressing proposed findings of fact in a noncore proceeding, permits the prevailing party to file a reply in response to an objection to the prevailing party’s proposed findings.

Rule 7016-1. Pretrial Procedure—Proposed Pretrial Order.

If the court requires a pretrial order, then ~~LR 2100-8~~, LR 16-2, and LRs 16-5(b), (c), and (d) apply, ~~but any referral to a~~ except that “magistrate judge” ~~must be read as a referral to a~~ means “bankruptcy judge.”

Comment. Current LR 2100-8 (proposed for restatement as LR 2100-6) addresses jury-trial procedures. Although proposed LR 2100-6(d)(1) requires a pretrial order in a matter that will be tried to a jury in district court, not every proceeding in which the bankruptcy judge requires a pretrial order will be tried to a jury. Thus, LR 2100-6 does not apply to all actions in which the bankruptcy court requires a pretrial order.

Rule 8001-1. Notice of Appeal—District of BAP.

~~LR 2200 applies.~~

Comment. LR 2100 and LR 2200 apply, according to their terms, to all bankruptcy cases. It is neither necessary nor helpful to say that any rule in that series applies to bankruptcy cases. The rule should be repealed.

Rule 8003-1. Motion for Leave to Appeal.

~~LR 2200 applies.~~

Comment. See comment to proposed repeal of [LBR 8001-1](#).

Rule 8006-1. Designation of Record—Transcript Order.

LR 2200 applies.

Comment. See comment to proposed repeal of [LBR 8001-1](#).

Rule 9004-2. Document—Captions.

[In (b) and (c), in the pleading caption, change the note as follows:]

NOTE: Add the following if district court has ~~matter for review~~ withdrawn the referral of the proceeding or matter under either LR 2100-4 or LR 2100-11, or on appeal under LR 2200: REFERRAL WITHDRAWN REFERRED[or ON APPEAL] TO U.S. DISTRICT COURT] Add the following if the proceeding or matter is on appeal: ON APPEAL.

Comment. The LBR 9004-2 note aids the district judge or other reader to quickly assess why a bankruptcy document is before the district court. The legend the current note prescribes for nonappellate documents, REFERRED TO U.S. DISTRICT COURT, incorrectly suggests that referral is to the district court, rather than by the district court to the bankruptcy court. The proposed revised note would prescribe two legends. REFERRAL WITHDRAWN would indicate that the district court has withdrawn the referral and thus acts as the bankruptcy trial court. ON APPEAL would indicate that the district court is acting as an appellate court with respect to a final bankruptcy court order or judgment. The absence of either legend would indicate that the document is before the district court for another reason, the most common of which will be consideration of proposed findings of fact and conclusions of law in a noncore matter.

Rule 9015-1. Jury Trials—Procedures.

~~(a) — **LR Applicability.** LRs [16-5\(b\) and \(c\)](#), 47, 48, and 51-1(c), ~~and (d)(1)~~, and (3-6) apply to contested matters and adversary proceedings in which a party is entitled to a jury trial.~~

~~(b) — **Consent to Have Trial Conducted by Bankruptcy Judge.** If a party has the right to, and has timely demanded, a jury trial, the parties may consent to have a jury trial conducted by the bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing either a statement of consent no later than the date the pretrial order is lodged or by consenting on the record on court.~~

~~(c) — **Pretrial Procedures.** LR 2100-8 and [16-5\(b\) and \(c\)](#) apply.~~

Cross-reference: Referral of Case or Adversary Proceeding—LR 2100 Jury Trial – LR 2100-6.

Comment. The proposed revised rule would consist of the single sentence, combining the effects of current (a) and (c), and a revised cross-reference to the LR addressing jury-trial rights, LR 2100-6. Current (b) is addressed in proposed revised LR 2100-6(c).

Rule 9021-1. Order or Judgment—Entry of; Costs.

[...]

Cross-references:

[...]

- Proposed Order or Judgment in Noncore Matters that Require Review, Determination, and Signing by a District Judge – LR 2100-5(a)(2).

[...]

Comment. The cross-reference proposed for amendment is to all of LR 2100. But considering the cross-reference’s preceding text, it should refer to current LR 2100-11(c), which is restated in proposed revised LR 2100-5(a)(2).

Rule 9029-3. Local Rules—District Court.

LRs 2100-~~2300~~2200 apply to cases and adversary proceedings in this court. The other LRs do not apply unless specifically referred to in an LBR. If an LBR references a specific LR, the reference incorporates any other LR cross-references within that LR unless stated otherwise.

Comment. Current LR 2300 is proposed for repeal.

~~Rule 9033-1. Final District Court Determination of Motion to Withdraw Reference or Change Venue Based on Proposed Findings of Fact and Conclusions of Law in Noncore Adversary Proceedings, and on Reports and Recommendations.~~

~~LBR 9021-1(b) regarding the format of a proposed order or judgment also applies to proposed findings of fact and conclusions of law, or a proposed report and recommendations.~~

~~**Cross-reference:** General re Referral of Bankruptcy Cases and Adversary Proceedings—
LBR 2100.~~

Comment. Under proposed revised LR 2100-2(c)(1), the LBRs, including LBR 9021-1(b), apply to a motion to withdraw referral and a report and recommendation. LBR 9033-1 is thus no longer necessary.