Proposed Revisions to

Local Bankruptcy Rules

and

Local Bankruptcy Forms

October 1, 2013

This document contains proposed revisions to the December 1, 2012 version of the Local Bankruptcy Rules for the District of Oregon and proposed revisions to various Local Bankruptcy Forms. A majority of the proposed revisions were recommended to the Court by the Oregon State Bar Debtor Creditor Section Local Bankruptcy Rules and Forms Committee. The Committee submitted explanatory notes with its proposals. The Committee Note follows each proposed change.

Proposed new language is in redline text. Proposed language to be deleted is in ~~strikeout text~~.

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 31, 2013 in order to be considered. After reviewing any comments, the Court will post the final revised rules which will take effect on December 1, 2013 unless otherwise noted.

Local Bankruptcy Rules & Forms Proposed Revisions

Rule 1002-1. Petitions–General

(a) Authority to File

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(3) Voluntary Petition by Attorney in Fact [new]

(A) Prerequisites to Filing Petition. An attorney in fact may file a voluntary petition on behalf of a debtor only if:

(i) the debtor is an individual;

(ii) a written power of attorney, valid under nonbankruptcy law, expressly authorizes the attorney in fact to file a bankruptcy petition on behalf of the debtor;

(iii) extraordinary circumstances exist warranting the commencement of a bankruptcy case under the authority granted by the power of attorney; and

(iv) the debtor is not an infant or an incompetent person.

(B) Duties of Attorney in Fact and Debtor; Limit on Authority of Attorney in Fact.

(i) The attorney in fact must sign the petition as attorney in fact for the debtor and file a copy of the power of attorney on the day that the petition is filed.

(ii) The court will issue and provide to the attorney in fact an order that the attorney in fact and the debtor show cause why the case should not be dismissed. Within three business days after the court issues the order, the attorney in fact must serve it on the debtor, the trustee, the UST, and all creditors and file a certificate of service. Within 14 days after service of the order (I) the attorney in fact must file a statement, signed under penalty of perjury, demonstrating whether and how the attorney in fact has complied with this rule, and (II) the debtor must file a statement, signed under penalty of perjury, either ratifying the filing of the petition and all statements in it or stating why the debtor cannot do so.

(iii) Unless the court orders otherwise, the attorney in fact may take no other action in the bankruptcy case on behalf of the debtor.

(iv) Without limiting (iii) above, the debtor must sign the schedules, statement of financial affairs, and all other documents filed by or on behalf of the debtor (other than the petition) and appear at the meeting of creditors.

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Cross-reference: Petition–Infant or Incompetent Person–LBR 1004.1-1.

Note

The court receives some petitions signed by an attorney in fact for the debtor. The proposed rule would regularize the process by which the court confirms that the petition filing was authorized. LBR 1004.1-1 governs the filing of a voluntary petition by a representative appointed under nonbankruptcy law for a debtor who is an infant or incompetent person or a person who seeks to be appointed next friend or guardian ad litem for the debtor.

Rule 1004.1-1. Petition–Infant or Incompetent Person. [new]

(a) **Prepetition Appointment of Representative.** If, before the petition date, a representative has been appointed by a court under nonbankruptcy law for a debtor who is an infant or incompetent person, then a copy of the appointment instrument must be filed with a voluntary petition or with the alleged debtor's first pleading responding to an involuntary petition.

(b) **No Prepetition Appointment of Representative.** If, before the petition date, no representative has been appointed by a court under nonbankruptcy law for a debtor who is an infant or incompetent person, then a motion for the court to appoint a next friend or guardian ad litem ("movant") for the debtor must be filed with a voluntary petition or with the alleged debtor's first pleading responding to an involuntary petition.

(1) The motion must be accompanied by the movant's declaration under penalty of perjury with the following information:

(A) the movant's name, address, and relationship to the debtor (the movant's relationship to the debtor as spouse or other close relative who might have an interest in the debtor's financial affairs will not necessarily preclude granting the motion);

(B) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;

(C) why appointment of the movant as next friend or guardian ad litem is necessary;

(D) why appointment of the movant would be in the debtor's best interest;

(E) the fee, if any, that the movant would charge the debtor for serving as next friend or guardian ad litem;

(F) the movant's criminal, financial, and professional history;

(G) the movant's competence to handle the debtor's financial affairs, including the movant's knowledge of debtor's financial affairs;

(H) whether the movant has any current or potential future interest in the debtor's financial affairs; and

(I) whether any of the debtor's debts were incurred for the benefit of the movant.

(2) In cases where appointment is sought on behalf of an incompetent person, the declaration must be accompanied by the following documents:

(A) a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs;

(B) a letter from the debtor's caregiver regarding the debtor's ability to conduct the debtor's own affairs; and

(C) a copy of any power of attorney or other document giving the movant authority to act for the debtor.

(3) The motion and declaration must be served on the debtor, the trustee, all creditors, the U.S. trustee, any governmental entity from which the debtor is receiving funds, the debtor's closest relative, if known, and all persons to whom notice must be given under ORS 125.060.

(4) The court will hear the motion before the meeting of creditors under § 341(a), if possible. The movant must appear to testify at the hearing, either in person or by telephone.

Cross-reference: Voluntary Petition by Attorney in Fact - LBR 1002-1(a)(3)

Note

Under FRBP 1004.1, the next friend of an infant or incompetent-person debtor who does not have a duly appointed representative, such as a general guardian, committee, conservator, or similar fiduciary, may file a voluntary petition on behalf of the debtor. The court must appoint a guardian ad litem for an otherwise unrepresented infant or incompetent-person debtor or make any other order to protect the debtor. The proposed rule follows *In re Jack F. Lane and Marilyn K. Lane.,* No. 12-36873-elp7, slip op (Bankr. D. Or. Oct. 25, 2012). The number and topic of the proposed LBR correspond to the number and topic of FRBP 1004.1.

Rule 1006-1. Fees–General

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(b) Payment Required when Filing a ~~Chapter 13~~ Petition. A debtor must tender not less than the amount specified on the current version of LBF #110.

Note

In an individual chapter 11 case in which the debtor seeks to pay the filing fee in installments, the court now requires a first installment, paid with the petition filing, of $405. The revised rule would expand the use of LBF #110 as the source of the minimum installment payment amounts from just chapter 13 cases to cases under both chapters 11 and 13.

Rule 1007-1. Lists, Schedules, Statements, & Other Documents.

(a) Chapter 12

(1) ~~Schedules D, E, and F (Liabilities).~~ Summary of Liabilities. ~~Schedules D, E, and F must be prepared by first listing all farm or fishing related debts under the heading "FARMING/FISHING OPERATION DEBTS" or "NONE" if appropriate, followed by a subtotal of those debts, then listing all nonfarm and nonfishing debts under the heading "NONFARMING/NONFISHING DEBTS" or "NONE" if appropriate, followed by a subtotal of those debts, and then a total of all debts listed in that schedule.~~ The debtor must deliver to the trustee, and any other interested party upon request, a summary of liabilities containing (1) a list of all farm- or fishing-related debts listed in schedules D, E, F, and G, followed by a subtotal of those debts; (2) a list of all nonfarm and nonfishing debts, if any, listed in those schedules, followed by a subtotal of those debts; and (3) a total of all debts listed in those schedules.

Note

Current LBR 1007-1(a)(1) appears to be designed to assist the trustee to determine the debtor's eligibility for chapter 12. It is difficult or impossible as a technical matter using common bankruptcy software to prepare schedules D, E, and F to display the required information in the required format. The revised rule would require a new, separate summary of liabilities with the required information in the required order. In addition to information from schedules D through F, the summary would require lease information from schedule G, which may not appear in schedules D through F.

Rule 7005-1: Service & Certificate of Service.

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Cross-references:

- Certificate of Service - LBR 9013-1(a)(2).
- Oral Argument/Telephone Appearance - LBR 9013-1(a)(6).

Note

LBRs 9013-1(a)(2) and (6) apply LBR 7005-1 to contested matters, so cross-references to them would be helpful.

Rule 7007-1: Motion Practice–Adversary Proceedings.

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Cross-references:

- Discovery Motion - LBR 7037-1.
- Documents - Requirements of Form - LBR 9004-1.
- Exhibits - LBRs 9004-1(a)(8) and 9017-1.
- Motion Practice - Contested Matters - LBR 9013-1(a)(3), (6), and (7).
- Summary Judgment - LBRs 7056-1 and 9013-1(a)(8).

Note

LBR 9013-1(a)(3), (6), and (7) apply LBR 7007-1 to contested matters, so cross-references to them would be helpful.

Rule 7008-1. Consent to Entry of Final Orders or Judgment–Complaint [new]

A complaint, counterclaim, cross-claim, or third-party complaint must state whether the pleader consents to the judge's entry of final orders or judgment. The pleader's failure to timely make that statement waives any objection to the judge's entry of final orders or judgment.

Note

In *In re Bellingham Insurance Agency, Inc.*, 661 F.3d 476 (9th Cir. 2012), *cert.granted sub nom Executive Benefits Ins. Agency v. Arkison*, No. 12-1200 (June 24, 2013), the Ninth Circuit Court of Appeals held that a party can waive–explicitly or implicitly–the right to entry of a final order or judgment in a matter in which the bankruptcy court would otherwise lack constitutional authority to enter the order or judgment. The proposed rule would enable the court to determine from the pleading whether the pleader disputes the court's constitutional authority to enter final orders or a judgment. The proposed rule number is based on FRBP 7008(a), which requires that a pleader state whether its claims are core or noncore, and it is thus numbered 7008-1. Because the rule addresses constitutional authority, not the core/noncore distinction, the rule's title differs from the Uniform Numbering System for Local Bankruptcy Rules ("UNS") entry for LBR 7008-1, "Core/Noncore Designation–Complaint."

Rule 7012-1. Consent to Entry of Final Orders or Judgment–Responsive Pleading [new]

A responsive pleading must state whether the pleader consents to the judge's entry of final orders or judgment. The responsive pleader's failure to timely make that statement waives any objection to the judge's entry of final orders or judgment.

Note

See Committee Note to proposed LBR 7008-1. The proposed rule number is based on FRBP 7012(b), which requires that a responsive pleading admit or deny the pleader's statement whether its claims are core or noncore, and the rule is thus numbered LBR 7012-1. Because the rule addresses constitutional authority, not the core/noncore distinction, the rule's title differs from the UNS entry for LBR 7012-1, "Core/Noncore Designation–Responsive Pleading."

Rule 7056-1. Summary Judgment.

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Cross-reference: Summary Judgment - LBR 9013-1(a)(8).

Note

LBR 9013-1(a)(8) applies LBR 7056-1 to contested matters, so a cross-reference to it would be helpful.

Rule 7065-1: Injunctions - Application for Temporary Restraining Order or Preliminary Injunction.

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Cross-reference: Injunctions - Application for Temporary Restraining Order or Preliminary Injunction - LBR 9013-1(a)(5).

Note

LBR 9013-1(a)(5) applies LBR 7065-1 to contested matters, so a cross-reference to it would be helpful.

Rule 9004-1. Documents–Requirements of Form.

(a) General Requirements

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~~**(7) Double-sided Documents.** Each page of a document filed on paper must be submitted with text on only one side. Text on the back of a page will not be made part of the official court record. A double-sided copy, including legal turn, is permitted for service of a paper copy on a Non-ECF Participant.~~

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Note

Double-sided hard copy documents. No purpose is served by continuing to bar the filing of a hard-copy document with text on both sides of the document. The court receives hard-copy documents only from filers who are not ECF participants, and it is no longer inconvenient for the court to scan double-sided documents before destroying them. Allowing double-sided documents is consistent with an environmentally sensitive policy of minimizing paper use, which the Oregon state courts recognize. Or. U.T.C.R. 2.010(4)(d) (permitting printing on both sides of document); Or. U.T.C.R. 2.010, 1996 Commentary (strongly encouraging use of recycled paper, having the highest available content of postconsumer waste, for original pleadings and other documents).

Rule 9010-1. Attorney–Notice of Appearance & Representation of an Organization.

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(e) Withdrawal of a Chapter 7 Debtor's Attorney Upon Full Performance of Agreed Upon Services.

(1) Fee Agreement re Required Services. An attorney who agrees to represent a debtor, but not represent the debtor in all matters relating to a case, must enter into a written fee agreement with the debtor that includes a detailed description of all services the attorney will perform on behalf of the debtor. Before the debtor signs the fee agreement, the attorney must provide written disclosures that clearly explain to the debtor additional duties the debtor may be required to perform without the attorney's assistance and the associated risks. The debtor must sign and date an acknowledgment of receipt of the disclosures. At a minimum, the agreement must provide that the attorney will perform the following services:

...

(E) Represent and counsel the debtor with respect to the reaffirmation, redemption, surrender, or retention of consumer goods securing obligations to creditors. The attorney is not required to appear at a hearing for court approval of a reaffirmation agreement.

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Cross-reference: Voluntary Petition by Attorney in Fact–LBR 9013-1(a)(8).

Note

The consensus reached at the 2013 Saturday Session was that an attorney for a debtor should counsel the debtor about the reaffirmation process and whether to enter into specific reaffirmation agreements, but the attorney need not appear at reaffirmation hearings.

Rule 9011-4. Signatures.

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(b) **Document Filed Electronically.** A document filed electronically must contain, in each location a signature is required, the electronic signature of the filer and of any other signer of the document as follows: "/s/ (Name)." By affixing the "/s/ (Name)" of another signer to an electronically filed petition or other document described in FRBP 1008, the filing ECF Participant certifies under FRBP 9011 that, when filing the document, the filer possesses a counterpart of the document bearing an original signature for each signer. However with respect to the signature of another signer on other documents, including an affidavit or a sworn verification or an unsworn declaration other than with respect to a document described in FRBP 1008, the filer need not possess the ink signature of the signer, but must at least possess an image of the ink signature, such as a photocopy, fax, or scanned image, or an electronic signature. A document may be signed in counterparts.

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Note

The rule now requires that an ECF participant retain an image of the ink signature of another person on a document not described in FRBP 1008. The reference to an ink signature could be interpreted to require that the document, at some time, have existed in hard copy and have borne an original, wet-ink signature. The proposed revision would acknowledge the recent developments in technology and commerce that have led to the use of electronic authentications and electronic signatures in place of wet-ink signatures for many purposes. The term "electronic signature" appears in the Uniform Electronic Transactions Act, adopted in Oregon at ORS chapter 84.001-.063, where it means "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." ORS 84.004(8). The revised rule would permit a person to use a stylus to sign a PDF document on a touch-screen device, which the ECF participant could then file, and the ECF participant could comply with the document-retention requirement by retaining an electronic copy of the document. The use of an electronic authorization or electronic signature would not be permitted for a document described in FRBP 1008, and it would not be necessary for the ECF participant him or herself, who legally signs an ECF-filed document simply by filing it.

Rule 9013-1. Motion Practice–Contested Matters.

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(c) Objection/Response and Reply...

(1) Objection/Response in All Chapters.

(A) Filing Deadline to Object or Otherwise Respond.

~~**(i) If No Hearing Is Set.** Subject to (ii) and (iii),~~ Unless the court orders otherwise, ~~A~~any objection or other response to a motion other than one described in 9021-1(a)(2)(C) must be filed no later than ~~fourteen~~ 14 days after the filing of the motion.

~~**(ii) If Notice of Hearing Is Served 14 or More Days Before Hearing.** Any objection or other response must be filed no later than seven days before the date set for hearing.~~

~~**(iii) If Notice of Hearing Is Served Fewer Than 14 Days Before Hearing.**~~

~~**(I) Chapter 7, 9, 11, and 15 Cases:** Any objection or other response must be filed no later than three business days before the date set for hearing.~~

~~**(II) Chapter 12 and 13 Cases.** Any objection or other response must be filed by 4:30 p.m. on the business day before the date set for hearing.~~

Note

The current scheme for determining the deadline to respond to a motion is complex and confusing because the deadline almost always moves. For example, under LBR 9013-1(c)(1)(A)(i), if a motion is filed on March 1 without a notice of hearing (as is usual), the initial objection deadline is March 15. But, under LBR 9013-1(c)(1)(A)(ii), if on March 4, the court or movant serves a notice that a hearing will be held on March 19 (more than 14 days after service of the notice of hearing), then the objection deadline becomes March 12 (seven days before the hearing), i.e., the objection deadline is accelerated by three days. And, under LBR 9013-1(c)(1)(A)(iii), if on March 4 the court or movant serves a notice that a hearing will be held on March 15 (fewer than 14 days after service of the notice), then the deadline also becomes March 12 (three business days before the hearing), i.e., the objection deadline is also accelerated by three days. Thus, when notice of a motion hearing is served other than with the motion, the

motion recipient must usually calendar two objection deadlines: the initial one 14 days after filing of the motion and another after receiving any notice of hearing.

Rule 9020-1. Contempt. [new]

A motion for an order of contempt must include allegations of the facts supporting the motion with reasonable detail and state the damages and other relief that the movant requests.

Note

The proposed new rule and court form are consistent with *In re Matthew Louis Dunn and Brandy Lee Dunn* Case No. 08-64756-fra7 (Mar. 5, 2013).

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

(a) General Requirements re Proposed Order.

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(2) Lodging

(A) General. Except for a stipulated order or judgment, an order lodged under (C), or a proposed order or judgment described in (a)(1), ~~a copy of~~ a proposed order or judgment may not be lodged unless either (I) a copy of it has been ~~must be~~ transmitted by hand-delivery, fax, or e-mail to all responding parties no later than three business days before lodging ~~the proposed order or judgment~~ or (II) all responding parties have affirmatively approved the form of order or judgment. Unless the proposed order or judgment is on an LBF, the proponent of the order or judgment must certify that the proponent has complied with the requirements of this subsection.

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(D) Orders Not to be Lodged. No party need lodge a proposed order of the types listed in LBF 9021.

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Notes

Expediting lodging of approved proposed order or judgment. No purpose is served by delaying the lodging of a proposed order or judgment approved by all responding parties. As proposed to be changed, the rule would permit the proponent of an order or judgment to lodge it sooner than three days after transmitting it to all responding parties if all responding parties affirmatively approve the form of the order or judgment.

No lodging of certain orders. LBF 9021 lists the types of orders that the court will enter. No party need lodge any order listed there.

LBF #110. Individual Debtor's Application to Pay Filing Fees in Installments.

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d. If a CHAPTER 13 CASE - $___ (at least ~~$125~~ 185) with the filing of the petition and the balance of $___ within 45 days from the entry of the order allowing installment payments.

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Note

The court proposes to modify LBF #110 to increase the minimum amount due upon filing a chapter 13 petition to $185. Recent data show that 35 percent of chapter 13 debtors who request to pay in installments do not pay the full fee.

LBF #541.1. Notice of Preliminary Hearing on Motion for Use of Cash Collateral [or] to Obtain Credit.

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4. If you ~~WISH TO OBJECT~~ wish to object to the motion, ~~YOU MUST DO ONE OR BOTH OF THE FOLLOWING: (1) ATTEND~~ you must do one or both of the following: (1) attend the preliminary hearing; ~~AND/OR (2) FILE~~ and/or (2) file with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave. #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), ~~BOTH: (a)~~ a written response, which states the facts upon which you will rely~~, AND (b) a certificate showing a COPY of the response was given DIRECTLY TO the Judge, and served on the U.S. Trustee and the party named in pt. 2 above~~ and, if the response is filed within three business days before the hearing, notify the judge's chambers by telephone immediately after filing the document, as required by LBR 9004-1(b). See Local Form #541.51 for details.

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Note

In the ECF era, no purpose is served by requiring delivery of chamber's copies of each response to a cash-collateral motion. If the response is filed within three business days before the hearing, LBR 9004-1(b) requires that the filer telephone chambers immediately after filing the document.

LBF #720. Notice of Motion for Relief from Automatic Stay in a Chapter 7/13 Case.

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III. If you wish to resist the Motion, you must, within 14 days of the service date shown below, file the following with the Clerk of the U.S. Bankruptcy Court [NOTE: if you mail or have a courier deliver the Response to the Court for filing, you must mail it or initiate the delivery ~~at least 3 days before the filing deadline, unless you use an overnight delivery service,~~ sufficiently before the deadline so that it will actually be received at the Court on time.]

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Note

The current bracketed language is incorrect in two respects. First, it suggests that mailing three days before the deadline is a requirement, when in fact the only requirement is to cause the response to be filed by the deadline. Second, it suggests that a response is timely if mailed three days before the deadline, but in fact if the response does not arrive at the court by the deadline, it does not help that the filer mailed the response three days before the deadline. The proposed revised language would make clear that a responder simply must ensure that that response is timely filed.