

Proposed Revisions to  
Local Bankruptcy Rules  
and  
Local Bankruptcy Forms  
September 26, 2011

This document contains proposed revisions to the December 1, 2010 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. A “Note” follows each proposed change outlining the reasoning for the 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](mailto:LBRcomments@orb.uscourts.gov). Any comments must be received on or before October 21, 2011 in order to be considered. After reviewing any comments, the Court will post the final revised rules which will take effect on December 1, 2011.

**Local Bankruptcy Rules Proposed Revisions**

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**Local Bankruptcy Rules Proposed Revisions**

**Rule 1002-1. Petition—General.**

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~~(e) — LBF #Ex. C-1 (Supplemental Petition Information). An LBF #Ex. C-1 must be filed with the petition.~~

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Note

The primary purpose of LBF #Ex. C-1 was to alert Chapter 7 trustees to assets requiring immediate attention. In practice, however, attorneys notify trustees of that type of asset by other means, and the form is confusing to *pro se* debtors. Thus, the form no longer serves its intended purpose, and its use should be discontinued.

### **Rule 1007-3. Statement of Intention.**

An individual chapter 7 debtor must file the statement under §521 ~~on LBF #521.05.~~ The statement must be filed using either LBF #521.05 or OBF #B8. If OBF #B8 is filed, the debtor must also file proof of service on the creditors and lessors identified in the statement certifying service of both OBF #B8 and LBF #715. If the debtor fails to comply with an applicable subsection of §521, a party may file an appropriate motion.

#### Note

FRBP 9029 does not allow the Court to adopt a Local Rule which prohibits or limits the use of official forms. OBF #B8 and LBF #521.05 are in essence identical, except that LBF #521.05 includes a certificate of service on the creditors and lessors included in the statement. Both “creditors” and “lessors” are included in the revision to emphasize that each must be served with a copy of the statement. Regardless of which form is used, the rule requires that LBF #715 also be served on creditors and lessors to inform of their rights with respect to non-judicial relief from the automatic stay under LBR 4001-1.(a).

**Rule 3007-1. Claim—Objection.**

**(a) Objection to Allowance of Classification of Claim**

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- (2) LBF for Objection.** A party other than a chapter 7, 12, or 13 trustee must file on LBF #763.2. A chapter 7, 12, or 13 trustee must file on LBF #763.

Parties intending to file omnibus objections under FRBP 3007(d) - (e) should contact the judge's chambers for instructions.

- ~~**(3) Secured Claim.** Unless otherwise provided for in a confirmed chapter 11, 12, or 13 plan, no distribution will be made on a claim filed solely as a secured claim.~~

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Note

LBF for Objection. A proposed addition to the rule requires a party intending to file an omnibus objection under FRBP 3007(d) - (e) to contact the court for instructions, as the use of forms other than LBF #763 or LBF 763.2 may be appropriate.

Secured Claim. This rule restates the law. Accordingly, it serves no purpose, and should be deleted.

### Rule 3015-3. Chapter 12 or 13–Confirmation

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#### (c) Chapter 13

~~(1) Case Administered in the Portland Office.~~ A debtor whose case is administered by the Portland office must, no later than seven days before the confirmation hearing, deliver to the trustee a proposed confirmation order on LBF #1350.05 either as a paper original (i.e., a facsimile copy is not acceptable) or, if using e-mail, in a textbased PDF format (i.e., the PDF may not be created by scanning a paper document, even if the scanning process produces it in a text-searchable format).

(1) Except as set forth in (4), a confirmation objection must be filed and served on the debtor within 14 days after the meeting of creditors concludes.

(2) If no objection to the proposed plan is timely filed, the debtor must submit to the trustee a proposed confirmation order on LBF #1350.05 no later than 21 days after the meeting of creditors concludes. The trustee must review, approve if appropriate, and lodge the proposed order no later than seven days before the date set for the confirmation hearing. The court will review and consider entering an approved proposed order without a hearing.

(3) If the trustee has filed an objection, the trustee's subsequent lodging of a proposed order constitutes withdrawal of the objection.

(4) The court will not consider an untimely filed confirmation objection unless the objector files with the objection a motion to treat the objection as timely, stating with particularity the facts constituting cause to do so.

~~(2) Case Administered in the Eugene Office.~~

~~(A) A party objecting to confirmation of the debtor's plan must either:~~

~~(i) No later than seven days before the first date set for the meeting of creditors, deliver, but not file, an objection to the trustee and debtor.~~

~~(ii) Attend the meeting of creditors and inform the debtor and trustee on the record of the objection.~~

~~(B) No later than fourteen days after the meeting of creditors concludes, the trustee or any other party that still objects to confirmation must file and serve an objection on the debtor.~~

~~(C) If no timely objection to the proposed plan is filed, the debtor must submit to the trustee a proposed confirmation order on LBF #1350.05 no later than 21 days after the meeting of creditors concludes. The trustee must review, approve if appropriate, and lodge the proposed order no later than seven days after receipt. The court will review and consider entering an approved proposed order without a hearing.~~

~~(D) If the trustee recommends confirmation, but does not approve the form of the order, the trustee must immediately notify the debtor and promptly file an objection. The debtor may then make the changes requested by the trustee and resubmit the form of order to the trustee.~~

~~(E) If the debtor is not current on preconfirmation plan payments when the debtor sends the proposed confirmation order to the trustee, the trustee must not lodge the order, and must file an objection to~~

confirmation.

~~(F) — If a party objects to confirmation due to the debtor’s failure to file tax returns, the debtor must file the required returns no later than seven days before the date set for the confirmation hearing.~~

~~(G) — A final hearing on confirmation will be held, without further notice, on the date set for the confirmation hearing in the notice of the meeting of creditors unless the court has previously entered a confirmation order. Testimony may be offered, and received if admissible, at the hearing.~~

#### Note

The proposed revision to this rule will simplify and harmonize the Portland and Eugene Chapter 13 confirmation practice.

**Rule 5005-4. Electronic Filing.**

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**(c) Effect of Electronic Filing.**

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**(2)** An electronically filed document will be deemed to have been signed as required by FRBP 9011 by the ECF Participant ~~whose name is associated with~~ to whom the court has assigned the login name used for the filing or on whose behalf a filing agent files the document. An ECF Participant is solely responsible for the use and control of the ECF Participant's login and password. The ECF Participant is also responsible for any actions taken by a filing agent on the ECF Participant's behalf and for the timely deactivation of a filing agent when the filing agent is no longer authorized to file on the ECF Participant's behalf.

**(d) ECF Participant Waiver.** By accepting an ECF login and password, an ECF Participant waives the right to receive notice or other documents, including notice of the entry of an order or judgment under FRBP 9022, by any manner other than electronically, and agrees to accept all service electronically. ~~The~~ but that waiver and agreement do not apply to service of a paper copy of a summons and complaint under FRBP 7004, or a subpoena under FRBP 9016, a document that is required by any FRBP to be served other than electronically on an actual a party (i.e., as opposed to an ECF Participant attorney for that party).



(e) **Retention of Original Document.** An electronically filed document ~~that includes a signature requiring a verification under described in FRBP 1008 or an unsworn declaration (e.g., signed under penalty of perjury under 28 U.S.C. §1746)~~ must be maintained in its original paper form for the later of the closing of the case or five years after the filing of the document ~~ten years~~ by the filing ECF Participant or the firm representing the party on whose behalf the document was filed, except as otherwise provided for trustees by the U.S. Department of Justice. The filing ECF Participant or firm retaining the original document ~~must produce the original document~~ it for review upon receipt of a written request.

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**Cross-reference: LBR 9001-4(b).**

#### Notes

ECF Filing Agent. See Note to Rule 9001.

Paper service. As current Rule 5005-4(d) states, FRBP 7004 requires service of a paper copy of a summons and complaint, and FRBP 9016 (with FRCP 45(b)(1)) requires personal service of a subpoena. Rule 5005-4(d) carves out those documents from the general agreement of an ECF Participant to accept electronic service of all notices or other documents. As revised, Rule 5005-4(d) would clarify that the carve-out does not purport to (because under FRBP 9029(a)(1) it cannot) supersede any FRBP that requires mail or personal service of a hard-copy document. In addition to FRBPs 7004 and 9016, FRBPs that require mail or personal service include FRBP 2002, which requires that several types of notices be mailed to specified persons; FRBP 3007(a), which requires that a claim objection be “mailed or otherwise delivered”; and FRBP 9014(b), which requires that the document initiating a contested matter be “served in the manner provided for service of a summons and complaint by Rule 7004.” Documents served in an adversary proceeding after the summons and complaint or in a contested matter after the motion or other initiating document need not be served by mail or in person. *See* FRBPs 7005, 9014(b). Thus, the Rule 5005-4(d) carve-out does not apply to those other documents, and the waiver permits electronic service of those other documents.

Original-document retention. As revised in 2010, Rule 9011-4(b) requires an ECF Participant to possess the original ink signature of a signer to a petition and accompanying documents described

in FRBP 1008 before filing them electronically. Rule 5005-4(e) addresses the period for which a filer must retain documents requiring ink signatures, but it was not revised in 2010 to reflect the change to Rule 9011-4(b). The proposed change to Rule 5005-4(e) would reconcile those rules. The court believes that an appropriate period for retaining original ink-signed documents is the later of the closing of the case or five years after the document was filed.

Cross-reference. The proposed additional cross reference is self-explanatory.

**Rule 5073-1. Photography, Recording Devices, Broadcasting, & Wireless Communication Devices.**

- (a) **General Photography/Recording/Broadcasting.** The taking of photographs, audio or video taping in, or live broadcasting from, the clerk’s office, any judge’s chambers, or a courtroom area as defined in LBR 5072-2 is prohibited. Unless specifically authorized by a judge, photographic, recording, taping, or broadcasting equipment not constituting “wireless communication devices” as defined in (b) must not be brought into the clerk’s office, any judge’s chambers, or a courtroom area as defined in LBR 5072-2. ~~The equipment to do those things, other than cellular phones and computers that have built-in cameras, must not be brought into a courtroom area.~~
- (b) **“Wireless Communication Devices” Defined.** “Wireless communication devices” include, but are not limited to, mobile or “smart” phones, laptop computers, tablet computing devices, mp3 players, and personal digital assistants (or similar devices).
- (c) **Wireless Communication Devices in a Courtroom or Courtroom Area.** ~~A wireless communication device must be turned off while in a courtroom. A “wireless communication device” includes a mobile phone, iPod, MP3 player, and a personal digital assistant (PDA). A wireless communication device may be turned on when not in a courtroom, but the device must not record, receive, or send audio, video images, pictures, signals, or movies at any time when inside a courtroom area.~~ The following rules apply to the use of wireless communication devices:

(1) A cellular wireless communication device (e.g., 3G/4G) must either be turned off in a courtroom or have its capacities that may interfere with the courtroom sound system, including cellular capacities, deactivated.

(2) A wireless communication device (e.g., wi-fi) turned on in a courtroom must be set to “silent,” unless audio capabilities are needed as part of a court proceeding.

(3) No wireless communication device may record or transmit audio, video images, pictures, or movies of a courtroom area as defined in LBR 5072-2 at any time.

**(d)** **Sanction.** Violation of this LBR may result in the offending device being confiscated by United States Marshal’s Office personnel; and the violator referred to the court for contempt or other sanction proceedings.

#### Note

The proposed revisions reflect the availability of wireless Internet access (wi-fi) in the courtrooms, and refine the limitations of the use of wireless communication devices in courtrooms.

**Rule 7007-1. Motion Practice—Adversary Proceedings.**

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

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**(3) Timing Requirements.**

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**(B) Reply.** In a chapter 7, 12, or 13 case, nNo reply may be filed, except for one in support of a motion for summary judgment, which must be filed and served no later than 14 days after the filing of the opposition. In a chapter 9, 11, or 15 case, a movant may file a reply in support of a motion as permitted by LBR 9013-1(c)(2)(B).

Note

See Note to Rule 9013-1.

## Rule 9001-1. Rules of Construction & Definitions.

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- (n) “ECF Participant” means an individual to whom the clerk has assigned a login and password to file documents electronically by ECF. A filing agent, as such, is not an ECF Participant.

....

- (q) “Filing Agent” means an individual to whom an ECF Participant has assigned a login and password to file documents electronically by ECF in the name of the ECF Participant.

### Notes

ECF Version 4.1 permits an ECF Participant to establish one or more filing agents. A filing agent is an individual (employee or, conceivably, contractor) who files documents in the name of the ECF Participant using the filing agent’s own ECF login and password. A filing agent can file on behalf of multiple ECF Participants, and an ECF Participant may have multiple agents. The change to the definition of “ECF Participant” would clarify that a filing agent, although possessing a separate login and password, is not an ECF Participant but instead files in the name of an ECF Participant. The definition of “filing agent” is new.

LBRs 9001-1(q) - (kk) will be renumbered as LBRs 9001-1(r) - (ll) in light of the addition of the “Filing Agent” definition.

**Rule 9011-4. Signatures.**

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**Cross-reference: See LBR 5005-4(e).**

Note

The proposed additional cross reference is self-explanatory.

**Rule 9013-1. Motion Practice—Contested Matters.**

**(a) Adversary Proceeding LBRs Applicable to Contested Matters.**

- (1) Briefs.** Except as provided in LBR 9013-1(d), LBRs 7007-1(b)(1) and; (2); and ~~(3)(B)~~ apply.

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**(c) Objection/Response and Reply.** An objection or other response to a motion or application must identify the filer and state with particularity the ground for the objection or other response. Unless an FRBP, LBR, order, or notice of a motion or application sets a different deadline, the following deadlines apply to an objection or other response and a reply in connection with a motion or application.

**(1) Objection/Response in All Chapters.**

**(A) Filing Deadline to Object or Otherwise Respond.**

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

- (ii) If Notice of Hearing is ~~Motion or Application~~ 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.

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**(2) Replies**

**(A) Chapter 7, 9, 12, and 13 Cases.** No reply may be filed without the court's prior written permission, except that a reply may be filed in support of a summary judgment motion.

**(B) Chapter 9, 11, and 15 Cases.** Any reply must be filed no later than three business calendar days before the date set for hearing; or, in the case of a motion or application to be heard served less than 14 days after service of the hearing notice, before the date set for hearing, no later than 4:30 p.m. on the business day before the date set for hearing.

Notes

Response deadline. The proposed changes to Rule 9013-1(c)(1)(A) and (c)(2)(B) address the current problem that arises when notice of a hearing on a motion or application is served after the motion or application is served. For example, if a motion is served on day 1 and on day 7 the court sets day 14 as the hearing date and the movant serves notice of the hearing that day, the response deadline under the current rule is day 7, the very day the hearing notice is served. Fairness requires that those affected by a motion receive reasonable advance notice of the response deadline. The proposed change would give effect to the purpose of the current rule by setting the hearing deadline not to when the motion or application is served, but instead by reference to when the hearing notice is served. With that change, the response in the foregoing example would be due three business days before the hearing in a chapter 7, 9, 11, or 15 case and by 4:30 p.m. the day before the hearing in a chapter 12 or 13 case. A similar change to Rule 9013-1(c)(2)(B) applies to the deadline for filing a reply brief in support of a contested-matter motion in a chapter 9, 11, or 15 case.

Permitted replies. Current Rule 7007(1)(b)(3)(B) permits a reply brief only with respect to an adversary-proceeding summary judgment motion, regardless of the case chapter. Current Rule 9013-1(c)(2)(A) prohibits a reply brief in support of a contested-matter motion in a chapter 7, 9, 12, or 13 case, making no mention of summary judgment motions and thus implying that a reply brief is prohibited in support even of a contested-matter summary judgment motion, but only in a

chapter 7, 9, 12, or 13 case. The proposed changes to Rules 7001-1(b)(3)(B) and 9013-1(c)(2)(A) would clarify that in a chapter 7, 12, or 13 case, a reply is permitted only in support of a summary judgment motion, whether in an adversary proceeding or with respect to a contested matter; and that in a chapter 9, 11, or 15 case, a reply brief is permitted in support of any motion, again either in an adversary proceeding or with respect to a contested matter. The policies supporting a broader reply right in chapter 11 and 15 cases (greater complexity and amounts at issue than other chapters) apply also to chapter 9 cases.

**Local Bankruptcy Forms Proposed Revisions**

**LBF #Ex. C-1—Supplemental Petition Information (8/8/08)**

Delete LBF #Ex. C-1.

Note

See Note to LBR 1002-1.

**LBF #720.80—Ch. 7/13 Motion for Relief from Stay (12/1/10)**

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**5. Other Pertinent Information** *(To be completed by creditor, if applicable)*

~~Creditor's claim is secured by real property and debtor's filing of this petition was part of a scheme to delay, hinder, and defraud creditors that involved either (a) transfer of all or part ownership of, or other interest in, the real property without creditor's consent or court approval, or, (b) multiple bankruptcy filings affecting the real property. The following facts support this assertion:~~

~~Other pertinent information:~~

**RESPONSE** *(Identify any disputed items and specify the pertinent facts) (to be completed by respondent)*

**6. Relief Requested (check all applicable sections):** *(To be completed by creditor)*

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Creditor has a security interest in real property and requests relief from stay with respect to an act against such property and that the relief be binding in any other bankruptcy case purporting to affect such real property filed not later than 2 years after the date of the entry of an order granting this motion. *(If you check this box, you must complete ¶5 above to support this request.)*

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Note

*In rem* relief from stay against a specific piece of real property is rarely granted, yet many parties check the box in error requesting *in rem* relief without specifying the basis for the requested relief. This change in the form will help to eliminate such errors, which lead to unnecessary responses and hearings.