

Federal Bankruptcy Rule, Fee and Form Changes and Local Rule and Form Changes

Effective December 1, 2016

United States Bankruptcy Court,
District of Rhode Island



Proposed Amendments to the Federal Rules

On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Appellate, Civil, Criminal, and Bankruptcy Procedures which are scheduled to take effect on December 1, 2016.

The following is a summary of the proposed changes to the Rules, Fees and Forms.

Disclaimer: This packet is not intended to be all encompassing and should not be considered legal advice. All parties acting before the court should perform any and all research prior to filing.



The following Federal Bankruptcy Rules are scheduled to change on 12/1/16:

- 1010
- 1011
- 1012
- 2002
- 3002.1
- 7008
- 7012
- 7016
- 9006
- 9027
- 9033



Rule 1010. Service of Involuntary Petition and Summons

Subdivision (a) of this rule is amended to remove provisions regarding the issuance of a summons for service in certain chapter 15 proceedings. The requirements for notice and service in chapter 15 proceedings are found in Rule 2002(q).



Rule 1011. Responsive Pleading or Motion in Involuntary

This rule is amended to remove provisions regarding chapter 15 proceedings. The requirements for responses to a petition for recognition of a foreign proceeding are found in Rule 1012.



Rule 1012. Responsive Pleading in Cross-Border Cases

This rule is added to govern responses to petitions for recognition in cross-border cases. It incorporates provisions formerly found in Rule 1011. Subdivision (a) provides that the debtor or a party in interest may contest the petition. Subdivision (b) provides for presentation of responses no later than 7 days before the hearing on the petition, unless the court directs otherwise. Subdivision (c) governs the filing of corporate ownership statements by entities responding to the petition.



Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

Subdivision (q) is amended to clarify the procedures for giving notice in cross-border proceedings. The amended rule provides, in keeping with Code § 1517(c), for the court to schedule a hearing to be held promptly on the petition for recognition of a foreign proceeding. The amended rule contemplates that a hearing on a request for provisional relief may sometimes overlap substantially with the merits of the petition for recognition. In that case, the court may choose to consolidate the hearing on the request for provisional relief with the hearing on the petition for recognition, see Rules 1018 and 7065, and accordingly shorten the usual 21-day notice period.



Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

Subdivision (a) is amended to clarify the applicability of the rule. Its provisions apply whenever a chapter 13 plan provides that contractual payments on the debtor's home mortgage will be maintained, whether they will be paid by the trustee or directly by the debtor. The reference to § 1322(b)(5) of the Code is deleted to make clear that the rule applies even if there is no prepetition arrearage to be cured. So long as a creditor has a claim that is secured by a security interest in the debtor's principal residence and the plan provides that contractual payments on the claim will be maintained, the rule applies.

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Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

Subdivision (a) is further amended to provide that, unless the court orders otherwise, the notice obligations imposed by this rule cease on the effective date of an order granting relief from the automatic stay with regard to the debtor's principal residence. Debtors and trustees typically do not make payments on mortgages after the stay relief is granted, so there is generally no need for the holder of the claim to continue providing the notices required by this rule.

Sometimes, however, there may be reasons for the debtor to continue receiving mortgage information after stay relief. For example, the debtor may intend to seek a mortgage modification or to cure the default. When the court determines that the debtor has a need for the information required by this rule, the court is authorized to order that the notice obligations remain in effect or be reinstated after the relief from the stay is granted.



Rule 7008. General Rules of Pleading

The rule is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court.

Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. Rule 7012(b) has been amended to require a similar statement in a responsive pleading. The bankruptcy judge will then determine the appropriate course of proceedings under Rule 7016.



Rule 7012. Defenses and Objections – When and How Presented – By Pleading or Motion – Motion for Judgment on the Pleadings

Subdivision (b) is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. The amended rule also removes the provision requiring express consent before the entry of final orders and judgments in non-core proceedings.

Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157 (b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. This amendment complements the requirements of amended Rule 7008(a).

The bankruptcy judge's subsequent determination of the appropriate course of the proceedings, including whether to enter final orders and judgments or to issue proposed findings of fact and conclusions of law, is a pretrial matter now provided for in amended Rule 7016.



Rule 7016. Pre-trial Procedures

This rule is amended to create a new subdivision (b) that provides for the bankruptcy court to enter final orders and judgments, issue proposed findings and conclusions, or take some other action in a proceeding. The rule leaves the decision as to the appropriate course of proceedings to the bankruptcy court.

The court's decision will be informed by the parties' statements, required under Rules 7008(a), 7012(b), and 9027(a) and (e), regarding consent to the entry of final orders and judgment. If the bankruptcy court chooses to issue proposed findings of fact and conclusions of law, Rule 9033 applies.



Rule 9006. Computing and Extending Time: Time for Motion Papers

Subdivision (f) is amended to remove service by electronic means under Civil Rule 5(b)(2)(E) from the modes of service that allow three added days to act after being served. Thus, whenever service is achieved through the court's ECF system or by the court via DeBN (debtor electronic noticing), the deadline to act will be the straight days (usually 7, 14, 21) applicable to the type of matter, without any additional time added.

Rule 9006(f)—like Civil Rule 6(d)—is amended to remove the reference to service by electronic means under Rule 5(b)(2)(E). The amendment also adds clarifying parentheticals identifying the forms of service under Rule 5(b)(2) for which three days will still be added.

Subdivision (f) is also amended to conform to a corresponding amendment of Civil Rule 6(d). The amendment clarifies that only the party that is served by mail or under the specified provisions of Civil Rule 5—and not the party making service—is permitted to add three days to any prescribed period for taking action after service is made.



Rule 9027. Removal

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court.

Some proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether or hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.



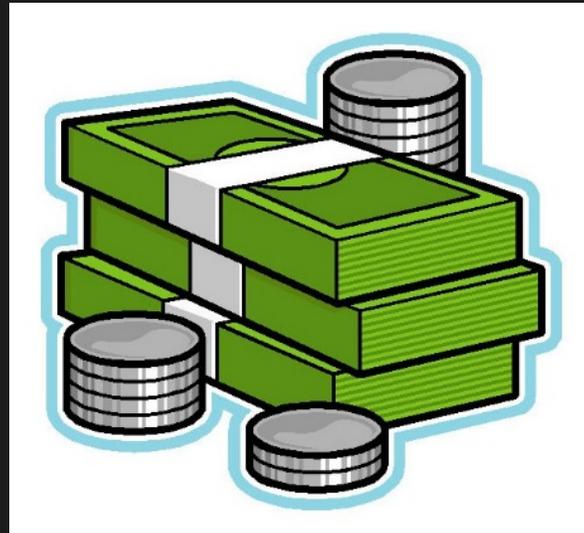
Rule 9033. Proposed Findings of Fact and Conclusions of Law

Subdivision (a) is amended to delete language limiting this provision to non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. If the bankruptcy court decides, pursuant to Rule 7016, that it is appropriate to issue proposed findings of fact and conclusions of law in a proceeding, this rule governs the subsequent procedures.



Fees

Several miscellaneous bankruptcy fees are being slightly increased on December 1, 2016 including amendments to schedules and motions for relief from stay – see table on next page



Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930) Item No.	Description	Current Fee	Approved New Fee
2	For exemplification of any document	\$21	\$22
3	For reproduction of an audio recording of a court proceeding	\$30	\$31
4	For filing an amendment to the debtor’s schedule of creditors, lists of creditors, or mailing list...	\$30	\$31
5	For conducting a search of the bankruptcy court records...	\$30	\$31
7	For filing any document that is not related to a pending case or proceeding . . .	\$46	\$47
19	For filing the following motions. . . <ul style="list-style-type: none"> •To terminate, annul, modify or condition the automatic stay; •To compel the abandonment of property of the estate. . . •To withdraw the reference of a case or proceeding. . . •To sell property of the estate free and clear of liens under [11 U.S.C. §363(f)]. 	\$176	\$181

Forms

Three official bankruptcy forms are being modified slightly, effective December 1, 2016



1. Form 420A - Notice of [Motion To] [Objection To]
2. Form 420B - Notice of Objection to Claim
3. Form 410S2 - Notice of Post-petition Mortgage Fees, Expenses, and Charges



Form 420A - Notice of [Motion To] [Objection To]
Form 420B - Notice of Objection to Claim

The form numbers are updated to comport with the form numbering style developed as part of the Forms Modernization project.

The forms are also amended to change the phrase “mail” to “send” to reflect the fact that there are various methods of providing documents to other parties.



Form 410S2 - Notice of Post-petition Mortgage Fees, Expenses, and Charges

This form is being amended in the Part 1 instructions to clarify how to report previously approved fees, expenses, or charges. The following language is added:

“If the court has previously approved an amount, indicate that approval in parentheses after the date the amount was incurred.”

This amended language replaces the prior instruction not to report any amounts previously ruled on by the bankruptcy court.



For more information, and a complete copy of the new proposed Federal Bankruptcy Rules and Forms, please visit the US Courts website at: (Rules appear in the Amendments Adopted by the Supreme Court section near the bottom of the page, and Forms are directly above that section).

<http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>

Please direct any procedural questions to the Clerk's Office at 401-626-3100



Local Bankruptcy Rule and Form Changes

Effective December 1, 2016

- Local Rule 1002-1
- Local Rule 1005-1
- Local Rule 1006-1
- Local Rule 1007-1
- Local Rule 1017-2
- Local Rule 2004-1
- Local Rule 3007-1
- Local Rule 3011-1
- Local Rule 3015-3
- Local Rule 4001-1
- Local Rule 5005-4
- Local Rule 5005-5
- Local Rule 7067-1
- R. I. Local Form 3011-1.1
- R. I. Local Form 6005-1.1



Conforming Changes

Many of the local rule and form changes are conforming changes with the December 1, 2016 federal bankruptcy rule changes.

In particular, the following rules are being amended to implement the changes to FRBP 9006(f) removing the 3 additional days to act when served electronically:

- LBR 1005-1
- LBR 2004-1
- LBR 3007-1
- LBR 3011-1
- LBR 4001-1
- Local Form 3011-1.1
- Local Form 6005-1.1



New Response Time Language for Moving Papers UPDATE YOUR FORM DOCUMENTS!!!!

For most moving papers, LBR 1005-1 sets forth the required response time language and applicable deadline which must be included on papers served and filed with the court. This language will change on 12/1/16 with the addition of the following language **in red**:

Within fourteen (14) days after service, **if served electronically**, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail **or other excepted means specified**, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.



Deficiency Action To Be Taken

- The Clerk's office will be taking corrective action by striking any document filed that does not include the updated response time language provided by LBR 1005-1 or other amended local rule, requiring re-filing in corrective form and re-service.
- Please calendar your response time appropriately – if you were served electronically, you do not receive an additional 3 days to act. For example, if a motion's response time is 14 days plus 3 for mail, a party served through counsel via ECF must respond in 14 days or seek an extension of time before then.



Amendments to LBRs 1002-1, 1006-1, 1007-1, 1017-2, and 3015-3

These five local rules are amended to make clear that a debtor has a right to request a hearing in accordance with LBR 1017-2 before a case will be automatically dismissed for noncompliance with the requirements of the bankruptcy code, rules or court orders.



Amendments to LBRs 5005-4 and 5005-5

These 2 local rules are amended to specify the action to be taken by the court when a filing fee remains unpaid after seven days.



Amendment to LBR 7067-1 Registry Funds

This rule is being extensively rewritten to conform with the national Court Registry Investment System, including the procedure for meeting the tax reporting requirements.



- For more information, and a complete copy of the recently approved local rule and form changes, please visit our website at www.rib.uscourts.gov under Rules and Procedures or under the News and Announcements column on the front page.
- Please direct any procedural questions to the Clerk's Office at 401-626-3100

