FREQUENTLY ASKED QUESTIONS [1]
regarding
Local Rules for the U.S. Bankruptcy Court
Eastern District of Missouri
(as of August 22, 2003)

Format of Pleadings

Motions, Responses & Notice of Hearing

Local Forms

Exhibits & Summary

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[1] These Frequently Asked Questions and Answers are provided as a tool for bankruptcy practitioners. The information provided is accurate as of the date released. These materials should not be used as a substitute for reference to the Bankruptcy Code or the Federal or Local Rules of Bankruptcy Procedure.

Chapter 13 Issues

Conversions

Attorney Issues

Adversary Issues

ECF Issues

FREQUENTLY ASKED QUESTIONS
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Format of Pleadings

1. **Local Rule 9004-1 D. Certificate of Service**. This Local Rule requires a certificate of service to include the name and address of each person served and the date and manner of service.
   - What should an attorney include in a certificate of service when some attorneys will be served electronically through the ECF system and others will be served by mail?
   - Does the certificate of service need to include the names of the attorneys served electronically and the e-mail address used, or is it sufficient to state that service was made electronically through the Court's ECF system, or by first-class mail on the following parties and then list the names and addresses?

   Answer: *The certificate of service must include the name and address of each entity served or noticed, even if notice was electronic. The Court requires the certificate of service to delineate the manner of service for each party served. The ECF system retains a list of the names and e-mail addresses of those served electronically.*

Motions, Responses & Notice of Hearing

2. **Local Rule 4001-1 D. Responses to Motions**. L.B.R. 4001-1 D. prohibits "general denials" in response to motions for relief.
   - If attorneys continue to file answers to motions in the form of general denials, what is movant's remedy? When should a motion for sanctions be filed?
   - Precisely what is a "general denial?" Is it a one line denial? Are paragraph-by-paragraph responses permitted even if mere denials? If the federal rules allow this, are our local rules more restrictive?

   Answer: *Attorneys should use their good judgment in bringing to the Court's attention when responses to motions are insufficient to enable the parties to confer in good faith about the substance of the motion. Local Rule 2093-1 B. imposes a duty to confer in good faith in advance of appearing before the Court and L.B.R. 4001-1 E. imposes a specific duty to confer on motions for relief. Whether sanctions are appropriate and what other procedures may apply will probably be determined on a case by case basis. The Court will balance an attorney's efforts to represent his or her client against allegations of delay and unnecessary litigation.*

3. **L.B.R. 9040-1. Responses to Motions (generally).** L.B.R. 9040-1 does not contain the same prohibition on general denials as that included in L.B.R. 4001-1 D. for motions for relief. Are general denials permissible in response to motions other than motions for relief?

Answer: *Even though this general rule does not prohibit "blanket denials" in response to motions other than motions for relief (as explicitly stated in L.B.R. 4001-1 D.), the same general principles apply, as does the general duty to confer in L.B.R. 2093-1 B. In addition, Fed. R. Bankr. P. 9011 applies.*

4. **9060-1 A. & B. Notice of Hearing.** The Local Rules generally specify how much notice must be given before a hearing and for written responses. L.B.R. 9060-1 A. is the general rule for notice of hearing on matters set for hearing; L.B.R. 9061-1 governs time limits on matters heard on negative notice, and L.B.R. 9013-1 B. is the general rule for written responses. In addition to these general rules, other rules also address specific types of motions.

- If the local rules do not specify how much notice must be given for a motion, for example, for a motion to compel the debtor to turnover property, etc., how much notice must be given of hearing?
- Can the default procedures of L.B.R. 9013-1 B. and C. apply if no response is filed five days before the hearing?

Answer: *If the time period for hearing is not specified in the Federal Rules or Local Rules, attorneys should contact the Courtroom Deputy. The default procedures apply as follows: On matters that are set for hearing, a default will be entered if no response is filed five business days before hearing. On matters set on Negative Notice, if proper certification has been made, defaults will be entered if no response has been filed, and these matters will not be set for hearing.*

5. **9013-1 C. Motion Defaults.** Will the Court grant a default if the notice of hearing does not contain the "warning" language required by L.B.R. 9060-1?

Answer: *This is a legal determination that may be decided differently by a particular judge depending on the circumstances.*

6. **9013-1 C. Counting Time for Responses Due Prior to Hearing.** When is the last day to file a response when the response is due five days prior to hearing under L.B.R. 9013-1 C.? Do you count weekends in calculating the five days?

Answer: *When a response is due five days before hearing, the five days are measured as five **BUSINESS** days. Thus, if a matter is set for hearing on a Wednesday, the response must be filed by midnight of the prior Wednesday. If no response is filed, the proposed order may be entered*

prior to hearing. Attorneys should check the case docket sheet to verify if an order has been entered prior to the hearing date. A particular Judge may await the hearing date before granting a default.

Local Forms

7. **Forms vs. Rules**. What should attorneys do if the Local Forms impose different requirements than the Local Rules? For example, language in the form Chapter 13 plan (L.F. 13, paragraph 4) regarding debts secured by real estate being cured over 30/36 months says "pay arrearage on debt secured by liens on residence . . . " which could include past-due real estate taxes, MSD delinquencies, etc. However, L.B.R. 3015-3 C. seems to limit the debt that may be cured to home mortgage arrearage. (NOTE: the explanation to L.F. 13, paragraph 4, seems to suggest the provision applies to only one creditor i.e. the mortgagee).

   Answer: *Just as the Bankruptcy Code controls the Rules, and Federal Rules control Federal Forms, the Local Rules control the Local Forms when there is a conflict. On the specific example about Local Form 6, the Chapter 13 Plan and L.B.R. 3015-3 C., legal determination is required on a case by case basis.*

8. **Access to Local Forms.** Where on Court's website can Local Forms be found? Can they be fillable?

   Answer: *The Forms are located on the "Local Rules" link on the Table of Contents and by a direct link on the homepage. The forms are not fillable, but can be downloaded in a WordPerfect format. The Court plans to offer fillable forms in the future.*

Exhibits & Summary

9. **L.B.R. 9040-1 A. Exhibit Summary**. The Local Rules generally require an Exhibit Summary to be used instead of attaching exhibits to most motions, pleadings, or claims.
   - Is an Exhibit Summary necessary if the documents that would be described on the Exhibit Summary are described within the text of the motion? In such instance, the Exhibit Summary would be a duplicate of the content of the motion.
   - When filing electronically, should the Exhibit Summary be the last page of the main PDF document or should it be done as a separate PDF and as an attachment to the main document?

   Answer: *The Exhibit Summary is to be filed as required by the Rules even if a substantial portion of the exhibit is described in the text of the motion. In ECF, the Exhibit Summary can be the last page of the main document or attached as a separate document.*

10. **L.B.R. 9040-1 and Reaffirmation Agreements.** How does the Exhibit Summary rule (L.B.R. 9040-1) impact Reaffirmation Agreements? Reaffirmation Agreements often incorporate the terms of the original contract and usually state the original contract is attached and its terms are incorporated by reference.

- If exhibits are limited to two pages, can the contract be attached even if it is more than two pages or is an Exhibit Summary to be used? If the original contract isn't scanned and filed, will this affect the validity of the reaffirmation agreement terms?
- How are signatures being handled on Reaffirmation Agreements?

Answer: *The Exhibit Summary can be used with Reaffirmation Agreements but whether failure to attach the actual contract affects the validity of the Reaffirmation Agreement is a legal question with the possibility for different approaches by different judges. As a general rule, the reaffirmation agreement must contain all terms being reaffirmed. Regarding signatures, the "no signature" rule under the CM/ECF Administrative Procedures applies to Reaffirmation Agreements filed electronically. The ECF rule on retention of original signatures also applies. Thus, a Reaffirmation Agreement may be filed electronically without signatures, but the filer must retain the document bearing all original signatures for two years after the case is closed. Alternatively, the original Reaffirmation Agreement may be scanned and filed in PDF format.*

Chapter 13 Issues

11. **L.B.R. 2015-2 A. Wage Orders**. Why is a motion to enter wage order necessary in Chapter 13 cases when Court automatically grants the motion and enters the order tendered? Could the order be entered without a motion, particularly if the plan refers to payment by wage order?

Answer: *Not all Chapter 13 cases involve a wage order; therefore requests for wage orders are necessary in individual cases. This Court generally enters an order only in response to a request, and except for oral motions made in open Court, such requests must be in writing and filed as a motion.*

12. **L.B.R. 1017-2 C. Amended Plans following Trustee Motion to Dismiss.** L.B.R. 1017-2 C. allows the debtor to bypass the motion to amend procedures of L.B.R. 3015-5 when filing an amended plan in response to a Trustee's motion to dismiss for lack of feasibility.

- When the debtor is filing an amended plan in response to the trustee's MTD, does the debtor have to include a motion to amend? Can the attorney use the limited

service option under 3015-5 B. 2? Is the plan set for hearing, and if so, what notice is given?

- If the Trustee doesn't file an MTD for lack of feasibility but the debtor wants to fix a feasibility problem, does the debtor still need a motion to amend? Does any motion to amend have to have "warning" language of 9060-1B in it?

Answer: *L.B.R. 1017-2 C. allows the debtor to file an amended plan (post-confirmation) without having to file a motion to amend. However, the plan must be served on all creditors and parties in interest unless grounds exist to use the limited service option of 3015-5 B. 2. If the debtor needs to fix a feasibility problem but the trustee has not objected, the debtor must file a motion to amend, amended plan and revised budget as set forth in 3015-5 and must serve these documents and a notice of hearing on all parties unless grounds for limited service exist.*

13. **L.B.R. 3015-3 G. 2 Child Support**. Can regular payments for child support still be made outside the plan because those payments are not yet due and are subject to modification?

Answer: *It is anticipated that ALL child support payments will be made through the plan unless the exception in L.B.R. 3015-3 G. 2 for certain post-petition arrearage claims applies. Other exceptions to the general rule for payments of current support through the plan may be acceptable to the Court on a case by case basis.*

14. **L.B.R. 3015-3 E. Interest on Secured Claims**. What is the interest rate for secured claims effective July 1, 2003?

Answer: *The rate is 4.56% .*

Conversions

15. **Conversion of One of Two Joint Debtors**. Do the rules permit and will the Court grant a motion to convert only one debtor in a joint case? Is this a judge-specific practice and if so, how do they each handle this and what does the Court do if two cases continue? Is there a new case number? How are assets divided among the estates?

Answer: *This is an unsettled and judge-specific matter. It involves a question of law that may be decided differently by different judges.*

Attorney Issues

16. **L.B.R. 2091-1 Withdrawal of Counsel**. This Local Rule requires attorneys to file a motion to withdraw as counsel and a proposed order. The motion must show service on the client, all counsel of record, the trustee, and anyone filing a request for notice.

- What if an attorney files a notice or memorandum of withdrawal and not a motion? Will the Court recognize the attorney as withdrawn from the case?
- How are fees handled for debtor's attorney who withdraws in a Chapter 13 case?

Answer: *A motion is required to withdraw. A particular judge may decide to treat a notice as a motion. The Court, however, will not remove an attorney as counsel of record without an order. Local Rule 2091-1 requires the Chapter 13 Trustee to cease payment to an attorney who has been allowed to withdraw, absent other order from the Court.*

17. **L.B.R. 2091-1 Compensation of New Chapter 13 Counsel**. When a new attorney takes over a flat fee Chapter 13 case, can the new attorney bill hourly? What is the preferred way to have prior counsel withdraw and new counsel enter? Is a Motion to Substitute Attorney of Record w/terms in the proposed order appropriate?

Answer: *L.B.R. 2091-1 permits an attorney to petition not to be bound by a prior attorney fee agreement. A motion to substitute with detailed terms may be used.*

18. **L.B.R. 2016-3 B. Chapter 13 Debtor's Attorney 35% Fee Split.** The Local Rules and Procedures Manual establish that debtor's attorneys in Chapter 13 cases will be paid from 35% of funds available to secured creditors. This is a slower payment method than under previous rules.
    - Will the Court consider confirming plans with different, (i.e. faster) attorney fee repay provisions if its clear that the plan is not going to pay attorney fees extremely fast in any event?
    - What standard must be shown to receive payment at a rate other than that specified in the Procedures Manual?

    Answer: *The 35% attorney fee payment rate was recommended by a practitioner's subcommittee formed to consult on Chapter 13 attorney fees as part of the Local Rules process. The Rule permits deviation from this rate in appropriate cases and as determined on a case by case basis.*

19. **L.B.R. 2016-3 A. Fee Election Form**. This rule codifies prior practice and requires Chapter 13 debtors attorneys to file the Fee Election Form (L.R. 6).
    - Does the Fee Election form have to be served on the Debtor and Chapter 13 Trustee? The form says to serve it but Rule 2016-3 A. does not.
    - If the Fee Election Form can be incorporated into standard language in the Rule 2016(b) disclosure filed with the Court, can the attorney omit the Fee Election Form? Similarly, if the attorney cross-signs the Chapter 13 plan with the debtor(s), and it includes the "fees for all services" statement in the plan, would that potentially allow counsel to dispose of the fee election form? The benefit of eliminating a local form (while still including its critical content in another, already- filed document).

Answer: *The Fee Election Form should be served on the debtor and Chapter 13 trustee and filed as a separate document. Inclusion of the form in the 2016b disclosure makes verifying the filing of the form more difficult for the Court.*

20. **L.B.R. 2090-1 B. Pro Hac Vice**. This rule details procedures for admission pro hac vice and use of local counsel. Is a pro hac vice motion required in an adversary if the attorney is admitted in the main case? What about being admitted in one case but not another? Does the attorney have to be admitted pro hac vice for every case in which the attorney is appearing?

Answer: *A pro hac vice motion is required in each case or proceeding. This is consistent with current practice and with District Court practice.*

Adversary Issues

21. **L.B.R. 7055-1 A. Motion for Entry of Default**. In order to obtain a default judgment, one must first obtain an Entry of Default. Certain allegations must be made regarding service, lack of response, military status and competency to obtain this Entry from the Clerk of Court (see p.20 of the Procedures Manual). The movant must then file a Motion for Default Judgment. This Motion requires the Clerk's Entry of Default as well as a supporting affidavit. The affidavit in support of the Motion for Default Judgment requires many of the same allegations already plead to obtain the Clerk's Entry of Default.

- Why is it necessary to provide the same information in the second affidavit in support of the Motion for Default Judgment when it is part of the affidavit necessary to obtain the Clerk's Entry of Default?
- How is the plaintiff supposed to know that the defendant is not in the military service or that the defendant is not incompetent? Are these additional questions that must be asked at 341 meetings or must the plaintiff undertake discovery to determine the answers to these two questions?

Answer: *The content of the affidavit in support of the Default Judgment is not necessarily identical to the content of the affidavit in support of the Clerk's Entry of Default. The affidavit for the Clerk's Entry must include the enumerated items stated in the Procedures Manual (essentially the fact of service, no response and entitlement to default). The Affidavit in Support of the Motion, however, is likely to include such additional attested facts as the amount of damages or other proof necessary to establish the case and need not include the information in support of the Clerk's Entry. Often, the plaintiff attaches the Clerk's Entry and its Affidavit in Support to the Motion for Default so there is no need to "re-allege" the same facts. The defendant's military service and competency can be determined at the*

341 meeting or by other means, or the plaintiff may allege the necessary facts "to the best of Plaintiff's knowledge and information . . . "

ECF Issues

22. **Cancelling ECF E-mail Notice**. How can a creditor attorney stop getting e-mails in a case (e.g. after a motion for relief is granted) without withdrawing from the case? If the attorney simply removes name from e-mail notification, must the attorney still be served in the case in paper format or does a voluntary termination of e-mail indicate consent to not getting served in paper format?

Answer: *The ECF system allows attorneys to control their e-mail accounts, including changing or removing an e-mail address. The CM/ECF Administrative Procedures, however, require attorneys to maintain a current and active e-mail address. If an attorney formally withdraws as counsel from the case, e-mail notices will not be sent. To manage e-mail, attorneys should use the ECF daily summary feature.*

23. **Signatures in ECF**. How are signatures handled on consent motions and reaffirmation agreements?

Answer: *Signatures are handled as outlined in the CM/ECF Administrative Procedures.*

24. **Copies for Trustees.** CM/ECF Administrative Procedures require debtor's attorneys to serve a hard copy of the petition package (and plan) on the trustee. Do the copies for the trustees need to include a copy of the debtors signatures, and if the signatures are missing, what are the trustee's options (what are the consequences)?

Answer: *Copies for the Trustee must contain signatures. Enforcement may depend on the trustee's request and handled on a case by case basis by the assigned judge. A certificate of service is NOT necessary.*

25. **Mandatory Electronic Filing**. When does ECF become mandatory?

Answer: *The Court has announced mandatory participation in the CM/ECF system will be required for ALL practitioners in (1) all Chapter 11 cases in all divisions, effective October 1, 2003; and in (2) all cases, all divisions, effective November 1, 2003.*