

## MEMORANDUM

**To:** Terence H. Dunn, Clerk of the United States Bankruptcy Court for the District of Oregon

**From:** Ad Hoc Local Rules Committee of the Debtor-Creditor Section of the Oregon State Bar

**Subject:** Suggested Changes to Local Bankruptcy Rules

**Date:** December 18, 2006

At the Court's request, the Oregon State Bar Debtor Creditor Section formed its Ad Hoc Local Rules Committee, consisting of David A. Foraker, David W. Hercher, and Thomas A Huntsberger, for the purpose of suggesting changes to the Court's Local Bankruptcy Rules. Clean and marked comparison versions of the rules with suggested revisions accompany this memorandum.

As we discussed, because the committee used Microsoft Word to prepare its revised version, the committee will arrange to have the Word document converted back to WordPerfect and then sent to you as soon as possible. Because Word's ability to create useful headers differs from that of WordPerfect, the running rule numbers in the header of the Word version are only approximately accurate.

The committee delivers the enclosed draft today in response to the Court's request for the Section's comments by today. The primary focus of the committee's drafting work to date has been nonsubstantive style, usage, and formatting, with deletion of duplication and some reorganization of material, including by invoking a few of the presently unused National Local Rule Numbers developed as part of the Uniform Numbering System.

We offer the draft with the hope that it will be a starting place for a discussion among the judges, you and your staff, the bar, and the public over several months. The committee itself continues to review the draft and will in the near future forward to the Court any

further comments or revisions to the draft on behalf of the committee. We expect substantive comments from other Section members who have recently informed the committee that they will be sending comments. We also expect comments at or as a result of next February's Saturday Session, where we understand the agenda will include discussion of the rules revision process.

The balance of this memorandum describes the principles the committee members apply to the rules review process, style resources the committee consulted, usage changes reflected in the draft, and a section-by-section explanation of certain changes reflected in the draft, as well as questions the committee raised about the intent or justification for certain existing rules.

The committee appreciates the opportunity to make these suggestions, and the members would make themselves available upon request to discuss this and subsequent drafts of revised rules.

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## I. PRINCIPLES

To be useful, the rules should be short. For that reason, the rules should not restate statutory or Federal Rule of Bankruptcy Procedure provisions.

Also, the rules should be self-contained. The committee's draft incorporates all the Court's current general order provisions not previously incorporated into the rules and the District Court Local Rule provisions relating to discovery and motion practice, but excluding those LRs unique to the district court's role with respect to admission of attorneys, reference withdrawal, and appeals. The committee hopes that, when the revised rules become effective, a practitioner will initially not need to consult G.O.s or LRs but instead will need only to consult the revised rules.

## II. STYLE, USAGE, AND FORMATTING RESOURCES

A helpful and relevant resource is B. A. Garner, *Guidelines for Drafting and Editing Court Rules* (Administrative Office of the United State Courts 1996), prepared for the Standing Committee on Federal Rules of Practice and Procedure (“Guidelines”). The following are among guidelines reflected in the committee’s draft:

- Divide the parts of a rule consistent with the following example:

Rule 6

(e) [subdivision]

(3) [paragraph]

(A) [subparagraph]

(ii) [item]

- Correctly use words of authority:
  - Instead of “is required to,” use *must* (not shall). For further support of the “delete every shall” suggestion, see B. Garner, *Legal Writing in Plain English* (U. Chicago Press) and J. Kimble, *Lifting the Fog of Legalese* (Carolina Academic Press).
  - For “has discretion to,” “is permitted to,” or “has a right to,” use *may*”
  - To express a future contingency, use *will*.

## III. RULE NUMBERING

In some cases, the committee proposes changing rule titles or numbers to comply with the Uniform Numbering System for Local Bankruptcy Court Rules (“UNS”) (Revised May 2003). Titles to the following rules have been changed: 1002-1, 1006-1, 1007-1, 1007-2, 1007-3, 1010-1, 1017-2, 2003-1, 2007.1-1, 2014-1, 2015-3, 2016-1, 3001-1, 3009-1, 3015-1, 3015-2,

3020-1, 4001-1, 4003-2, 4004-1, 4004-2, 5005-1, 5009-1, 5011-2, 5073-1, 7004-2, 7007-1, and 7016-1.

#### IV. TERMINOLOGY CHANGES:

##### A. Actors.

For consistency within the rules and between the rules and the Bankruptcy Code and FRBP, each current reference to a type of actor that could include a governmental entity, a partnership, a corporation, or an individual is replaced with *entity*, defined in §101(15) to include estate, trust, governmental unit, United States trustee, and person, which in turn is defined in §101(41) to include individual, partnership, and corporation.

The draft uses *party* to refer to an entity engaged in litigation in the broadest sense, by making or opposing a request for judicial relief in an adversary proceeding or a contested matter. But *party* is not used to refer to other entities, such as creditors or other entities entitled to receive notices but that have not yet not engaged in litigation. Thus, current references to “parties in interest” are changed to “entities entitled to receive all notices” or similar phrases.

##### B. DIP; trustee

Consistent with their Code definitions, *debtor in possession* and *trustee* are redefined, so *trustee* now means the appointed trustee or the DIP in a chapter 11 case if no trustee has been appointed and is serving. Thus, current references to “the DIP (or trustee if one has been appointed)” are changed to *the trustee*.

##### C. And/Or

Following §102(5), under which “or” is non-exclusive, “and/or” is changed to *or*.

D. Includes

Following §102(3), under which “includes” is not limiting, “but not limited to” is deleted as unnecessary.

E. Deadlines

The different phrases in the current rules establishing deadlines to complete tasks are reduced to two forms: (1) “within” a number of days after another event, and (2) “no later than” a number of days before or after another event if the task could be completed before the event from which the deadline is calculated.

F. “Original” Documents

Where “original” is currently used to distinguish a document from an amendment of the document or to distinguish a deadline from an extension of the deadline, “original” is replaced with *initial*.

G. Clarity and specificity

Implicit in any rule requiring that certain information be set forth in a document is the requirement that the information be clear and specific. Thus, no purpose is served by requiring that information be set forth in the document “clearly” or “specifically,” and those terms are deleted.

V. INTERIM FEDERAL RULES OF BANKRUPTCY PROCEDURE

Each IFRBP is included at the beginning of the corresponding rule without a subdivision number, in the format “IFRBP [#] is adopted.” When the FRBPs are amended to include the IFRBPs, there will no longer be any need to refer to the IFRBPs in the rules, and the IFRBP references can then be deleted from the rules.

## VI. ECF

### A. Service on United States trustee

The current rules contain many separate requirements for service of documents on the UST. The UST is an ECF Participant in every case. All documents are either filed as or converted to electronic form and served on the UST electronically. Thus, no purpose is served by requiring service on the UST, and each of those requirements is deleted. The same is probably the case with respect to all panel trustees, but the committee did not in this draft delete requirements that documents be served on trustees.

### B. Segregation of conventional filing rules

Especially in view of the requirement that all attorneys file using ECF by August 1, 2007, all rules addressing conventional paper filing would ideally be grouped in one location—with a view to eventually being deleted as unnecessary—and the remaining rules would assume universal ECF filing in this draft. The committee did not, however, undertake those tasks.

## VII. RULE DISTINCTIONS BASED ON PETITION DATE

Several rules have alternate provisions applicable to cases commenced before or after certain dates, most recently 10/17/05, the effective date for most BAPCPA provisions. The rationale for some of the older chronological distinctions might have expired. In those cases, the alternative provisions applicable to the prior periods should be deleted, leaving one provision applicable to all cases. The committee did not undertake that task in this draft, but it also did not incorporate paragraph 1 of G.O. 03-2 because it is applicable only to chapter 13 plans or supplemental fee applications filed by September 14, 2003.

## VIII. DISTRICT COURT FORMATTING

New Rule 9004-1.(f) creates a safe harbor with respect to bankruptcy court document formatting requirements for documents that comply with district court formatting requirements. The safe harbor would allow attorneys practicing in both bankruptcy and district courts to format pleadings in the same way. The rule does not affect any required bankruptcy-specific information required to be included in pleadings.

## IX. SECTION-BY-SECTION COMMENTS AND QUESTIONS

In the following discussion, subdivisions of the current rules are in the format “A.1.e,” and subdivisions of the revised rules are in the format “(a)(1)(E).” Rule numbers are in the format “1001-1” without prefix.

### A. 1001-1

In current D.2, the definition of “attorney” with reference to FRBP 1006(b) is deleted as an unnecessary repetition of the substance of that FRBP. References throughout the rules to attorneys as alternates to their clients (*i.e.*, “the debtor, or the debtor’s attorney if the debtor is represented by an attorney”) are deleted as unnecessary because the nature of an attorney-client relationship is that an attorney can act in lieu of the client. Also, FRCP 5(b)—requiring service of documents on an attorney representing a party—applies to adversary proceedings through FRBP 7005 and to contested matters through FRBP 9014(b). Thus, the remaining current definition of “attorney” as including an entity appearing without an attorney is also deleted as unnecessary.

In current D.4, the phrase “unless otherwise noted” in the definition of “clerk” is unnecessary in view of the phrase “unless the context requires otherwise” in the preface to all the definitions.

In current D.7 and D.22, the definitions of DIP and trustee are changed.

Consistent with the Code, “trustee” includes DIP. Thus, most references to DIP in the rules have been changed to trustee.

Current F.4 is moved to revised 9004-1.(a)(8).

B. 1002-1:

To better understand current B.2, it would be helpful to know by whom and to whom must the notice of consumer debt petition be given.

Current D addresses documents other than the petition and is thus moved from current 1002, “Petition—General,” to revised 5005-4, “Electronic Filing.”

Current E is moved to this rule from 1004-1, “Petition.”

C. 1003-1:

Under the UNS, this rule is now numbered as 1010-1, “Petition—Involuntary.”

D. 1005-1:

To better understand current A, it would be helpful to know whether there is any reason the “mixed” case requirement applicable to debtor names in the petition caption should not also apply to other filed documents for uniformity.

E. 1006-1:

To better understand current A.1.b., it would be helpful to know the amount of the filing fee down payment required in chapter 12 and 13 cases.

To better understand current A.2., it would be helpful to know whether dismissal for untimely installment payment is automatic and without notice.

Current E, “Waiver of Filing Fee,” is deleted as an unnecessary statutory repetition.

F. 1007-4:

Is current F.2, revised (f)(2) (requiring taxing authority to file motion to dismiss or convert) necessary?

G. 1009-1:

Because the UST is an ECF Participant and receives all filings electronically, no purpose is served by requiring service on the UST of any filed document, and all references throughout the rules to service to the UST have been deleted.

H. 2002-1:

Current J is deleted as superseded by Administrative Procedures.

I. 2003-1:

Current A.2.b. (the procedure to request rescheduled §341(a) meeting) is deleted as superseded by UST policy.

To better understand current B.2. requiring the UST to file original trustee bond and amendments, it would be helpful to know whether it is not the case that all paper documents filed with clerk are destroyed after scanning and thus that original bonds should be retained by the UST or clerk.

J. 2004-1:

Revised (a) permits excerpts of official transcripts of hearings or §341(a) meeting examinations to be offered “as evidence,” deleting “at a court hearing” to clarify that evidence can be offered to support a motion (such as a motion for summary judgment or for a preliminary injunction), which might be decided without a hearing.

K. 2012-1:

This rule requires a succeeded trustee to deliver copies of certain filed documents to the successor trustee. Is this rule necessary in view of availability of all those documents via PACER?

L. 2015-1:

LBF #740.3, mentioned in current B., does not appear on the court's Web site.

To better understand current F., it would be helpful to know the justification and authority for requiring the signature card for a new bank account to state that the depositor is a DIP or trustee. The legitimate concern to enable the DIP and others to distinguish between checks drawn before or after the petition date can be satisfied by reference to the account number on the check.

M. 2015-3:

It is unclear how the first two sentences of current D, regarding record destruction by a trustee, fit together.

N. 2016-1:

Current A.2. is deleted as an unnecessary restatement of the rule's purpose.

Revised (h) reflects current §330(a)(7) by eliminating the need for time records to justify the trustee's non-attorney fee.

The limitation phrase at the end of current H.2.b. (revised (h)(3)(B)), re expenses reimbursable to a professional employed by trustee, is unclear:

Revised (j) (Secured-Creditor Attorney Fees) is from G.O. 97-1, pt. 4 and G.O. 98-1, pt. 6.

O. 3001-1:

The rule is confusing because it appears to say that a chapter 12 or 13 trustee may pay on late-filed claims simply because the debtor served a late claim on the trustee.

Should current A.3.d. (payment of partially unsecured secured claim in chapters 12 and 13) apply also to chapters 7 and 11?

Current D (copies of filed proofs of claim) is deleted as unnecessary under 5005-1(b), which establishes a procedure for obtaining conformed copies of all filed documents.

Current E (revised 9013-1.(c)(1)—service) is from current 3001-1.E.

P. 3004-1:

This rule, “CERTIFICATES OF SERVICE RE NOTICE OF CLAIM “TIMELY” FILED BY DEBTOR OR TRUSTEE,” is deleted as unnecessary.

Q. 3007-1:

Current A.3 is deleted as duplicative of 3004-1.

R. 3015-1:

The second sentence of current A.4 is confusing. It refers to “docketing” a plan copy and confirmation order draft delivered to the chapter 13 trustee. Also, it is not clear who will return the copy to the debtor.

Current A.5 (certificates of service) is deleted as duplicative of revised 5005-4(f)(1).

Current B.2.b re plan confirmation is moved to new 3015-3, “Chapter 13—Confirmation.”

It is not clear how current B.3.b.(2)(c)(1) contemplates a trustee objecting to plan confirmation.

Under the UNS, current C (modified plans) is renumbered as 3015-2 and renamed.

Revised (c) (plan provisions re attorney fees and supplemental applications for compensation) is from G.O. 03-2.

Revised (c)(1) and (2) are confusing.

S. 3015-3

This new rule is from current 3015-1.B.2.b.

T. 3016-1

Current B on plan modifications is moved to new 3019-1, “Chapter 11—Amendments to Plans.”

U. 3019-1

This new rule is from current 3016-1.B.

V. 4003-1:

Under the UNS, current 4003-1 (lien avoidance) is renumbered as 4003-2.

W. 4004-2:

Current A is confusing regarding the deadline for 12 and 13 cases.

X. 4008-1:

What authority is there to impose a deadline to file a reaffirmation agreement?

Y. 5001-2:

The reference to 1007-3.F in current A.3 is confusing because no such rule exists.

Z. 5003-2:

This rule, “Removal of Court Papers,” is deleted as unnecessary because court papers are destroyed after being scanned, and PACER access is available.

AA. 5005-4:

This new rule was selected from portions of G.O. 03-3, Pts. 1-17, 32, and 50.

Portions of G.O. not included in rule should be added to Administrative Procedures.

BB. 7001-1:

In current A, the final sentence (describing the unavailability of fee waiver for adversary proceedings) is deleted as an unnecessary restatement of statute.

Current C (adversary proceeding motions) is moved to 7007-1, “Motion Practice (in APs).”

Re current H (impermissible stipulations), parties ought to be permitted to stipulate in writing, without court approval, to extend deadlines that do not affect hearings or deadlines to file documents. Revised (h) removes “Deadlines established by the case scheduling order” from those that cannot be modified without court approval. The deadlines established by the case scheduling order that should not be modifiable continue to be separately listed in (h).

CC. Current 7004-1:

This rule, governing only service on the UST, is deleted. *See* VI.A above.

DD. Current 7007-1:

This new 7007-1 (Motion Practice (in Adversary Proceedings)) is from LR 7.1.

Revised (d)(3) (motion hearing) is from LR 7.1(d)(1).

Revised (d)(4) (oral argument by telephone conference) is from LR 7.1(d)(3).

EE. 7015-1:

The current text of this rule on document amendment is essentially duplicated by 9004-2.F., which appears in revised 9004-1.(g).

FF. 7016-1:

The reference in current to LR 2100.1 is corrected to 2100.8 and moved to revised 7015-1 re jury trials.

Revised (a) (pretrial order content requirement) is from LR 16.6(b).

Revised (b) (service and lodging of pretrial order) is from LR 16.6(c).

Revised (c) (completion of discovery defined) is from LR 16.2(e).

GG. 7026-1

Revised (a) (timeliness of objection) is from LR 26.7(a).

Revised (g) (form of discovery requests) deletes the requirement to leave space for answers in discovery requests, recognizing that in the age of computers, answering parties almost always retype the entire requesting document and then add responses and objections.

HH. 7030-1:

This new rule (depositions) is from LR 30.3.

New (b) (pending questions) is from LR 30.5.

New (c) (motions relating to depositions) is from LR 30.6.

New (d) (deposition of experts) is from LR 30.8.

II. 7033-1:

This new rule (interrogatories—generally) is from LR 33.1.

New (a)(1) (definitions) is from LR 33.1(c).

New (a)(2) (prohibited form of interrogatories) is from LR 33.1(d).

New (b) (answers to interrogatories) is from LR 33.2(a).

New (b)(2) is from LR 33.2(b).

JJ. 7034-1:

This new rule (requests for production) definitions, is from LR 34.1(c).

New (b) (responses) is from LR 34.2(a).

New (b)(2) is from LR 34.2(b).

KK. 7036-1:

This new rule (requests for admission, definitions) is from LR 36.1(c).

New (b) (response or objection) is from LR 36.2.

LL. 7037-1:

This new rule (failure to make disclosure or cooperate in discovery) is from LR 37.1.

New (a)(1) is from LR 26.5(a).

New (a)(3) (certification) is from LR 33.4(b).

New (a)(5) (no replies) is from LR 26.5(c).

New (b) (deadline to comply with discovery order, is from LR 37.2.)

MM. 7056-1:

Revised rule is from LR 56.1.

Revised (a) (motion for summary judgment) is from LR 56.1(a).

NN. 7067-1:

Current D (private agreements) is deleted as unnecessary.

OO. 9004-1:

Current A.17 (prohibition on substantive arguments in footnotes) is moved to revised 7007-1.(b)(1)(C).

PP. 9004-2:

Current G (proof of service) is revised to permit the filing of a stand-alone proof of service applicable to one or more served documents and is moved to revised 9004-1.(h). Very often, bankruptcy proofs of service include many pages of party names. When multiple

documents are filed at the same time, fewer pages of document are used by preparing a single proof of service applicable to all the documents. No purpose is served by requiring service of a proof of service unless a period of time runs from the service date. Because the rule requires that all documents contain or be accompanied by proof of service, individual requirements throughout the rules that a document contain proof of service are deleted.

QQ. 9010-1:

Current A.2.3 (obtaining conformed document copies) is moved to the filing rule, revised Rule 5005-1.(b).

Current B. (re professional appointment applications in chapter 11 cases) is deleted as restating Code and FRBP provisions.

Current C (cross-reference to 2016-1) is deleted as unnecessary.

RR. 9013-1:

To better understand current D.1 (revised (d)(1)—objection deadline), is there any applicable contested matter response filing and service deadline other than three days before the hearing?

Current E is deleted as duplicative of revised 7007-1.(c).

SS. 9015-1.

In current A (revised (a)), the deleted language just restates FRBP 9015.

TT. 9021-1:

Re current A.4.a.(4) (revised (a)(4)(A)(iv)—requirement that submitting party sign an order or judgment), Oregon state court practice dispenses with the requirement of a “presented by” signature. Is there any reason to require a signature here, as long as the “presented by” information is typed?

Re current B.1 (revised (b)(1)), why not let the clerk to tax costs under FRBP 9054(b)?

Current D (enforcement of judgments) is deleted as duplicative of 7069-1.

Revised (d) (reminders to the court) is from G.O. 96-2.

UU. 9027-1:

Re current B (revised (b)), there is no Code or FRBP deadline for a remand motion. What is the authority for a per se deadline, rather than a facts and circumstances, a case-by-case analysis?

VV. 9036-1:

Rule is new, from G.O. 01-1 pt. 7.

X. UNUSED UNIFORM LOCAL RULE NUMBERS:

The following ULRN have not been used in Oregon. Ideally, many of the unused local rule numbers would be used as part of the rules, either as a better location for existing rules or as a location from which cross-references could be made to existing rules. The committee has not yet had time to do that but recommends that it be done.

1004-1	Petition—Partnership	1007-5	Statement of SSN (Privacy)
1014-1	Transfer of Cases	1014-2	Venue—Change of
1015-1	Joint Administration/ Consolidation	1015-2	Related Cases
1070-1	Jurisdiction	1071-1	Divisions—Bankruptcy Court
1072-1	Places of Holding Court	1073-1	Assignment of Cases
1074-1	Corporations	2002-3	United States as Creditor or Party
2015-4	Trustees—Chapter 12	2015-5	Trustees—Chapter 13

2019-1	Representation of Multiple Parties	2020-1	United States Trustees
2070-1	Estate Administration	2071-1	Committees
2072-1	Notice to Other Courts	2080-1	Chapter 9
2090-1	Attorneys—Admission to Practice	2090-2	Attorneys—Discipline & Disbarment
2091-1	Attorneys—Withdrawals	3006-1	Claims—Withdrawal
3021-1	Dividends—Under Plan (Ch. 11)	3070-1	Chapter 13—Payments
4002-1	Debtor—Duties	4002-2	Address of Debtor
4003-1	Exemption	4007-1	Dischargeability Complaints
4070-1	Insurance	4071-1	Automatic Stay—Violation of
5001-1	Court Administration	5003-3	Claims—Register
5005-2	Filing Papers—Number of Copies	5005-3	Filing Papers—Size of Papers
5070-1	Calendars & Scheduling	5071-1	Continuance
5072-1	Courtroom Decorum	5075-1	Clerk—Delegated functions of
5076-1	Court Reporting	5077-1	Transcripts
5078-1	Copies—How to Order	5081-1	Fees—Form of Payment
5090-1	Judges—Visiting & Recalled	5092-1	Signatures—Judges
5095-1	Investment of Estate Funds	6070-1	Tax Returns & Tax Refund
7004-1	Service of Process	7005-1	Certificate of Service (APs)
7007.1-1	Financial Discl. by Corp. Party	7008-1	Core/None Core Designation (Complaint)
7012-1	Core/None-Core Designation (Responsive Pleading)	7023-1	Class Action

7024-1	Intervention	7040-1	Assignment of Adversary Proceedings
9003-1	Ex Parte Contact	9006-1	Time Periods
9009-1	Forms	9010-2	Power of Attorney
9011-1	Attorneys—Duties	9011-4	Signatures
9013-3	Certificate of Service— Motions	9016-1	Subpoenas
9016-2	Witnesses	9020-1	Contempt
9021-2	Orders—Effective Date	9022-1	Judgments & Orders—Notice of
9029-2	Local Rules—General Orders	9029-3	Local Rules—District Court
9035-1	Bankruptcy Administrators	9070-1	Exhibits
9071-1	Stipulations	9072-1	Orders—Proposed
9073-1	Hearings	9075-1	Emergency Orders
9076-1	Electronic Service		