

Local Rules

These rules are current as of September 27, 2001.

Local Bankruptcy Rule 1006-1

FEES - INSTALLMENT PAYMENTS

- (a) If a chapter 13 debtor desires to pay filing fees in installments, payments must be made directly to the clerk of court.
- (b) An application to pay filing fees in installments must clearly state the dates upon which installments will be paid.
- (c) If any installment payment is not paid timely, the court will dismiss the case and will impose an injunction against refiling unless the debtor pays the filing fee installment due within 10 days of the date the debtor is sent by the clerk by mail a notice of intent to dismiss the case and after opportunity to cure.
- (d) In any case which is dismissed or converted to any other chapter prior to full payment of the fees, the chapter 13 trustee shall pay any unpaid filing fees from money paid to the chapter 13 trustee prior to any disbursement of any money to any other parties.

Local Bankruptcy Rule 1007(b)-1

LISTS, SCHEDULES AND STATEMENT

- (a) All documents pertaining to real estate filed by any party in any bankruptcy case must contain the address of the real property (street or road or 911 number) and also shall contain the legal description of the real property at issue. If no legal description is included, there must be a statement included in the document establishing good cause for the omission.
- (b) Parties shall submit master address lists in the format required by the clerk of court. The clerk may require the lists to be submitted on computer diskette.

Local Bankruptcy Rule 1009-1

AMENDMENT TO PETITIONS, LISTS, AND SCHEDULES

- (a) If a debtor or the debtor's attorney amends any schedule to include an additional creditor, the debtor or the debtor's attorney shall send a summary of amendment which, in a chapter 11 or chapter 13 case, includes the notice described in paragraph (b) to any affected party and to the trustee. The summary of amendment must contain a clear statement of what creditor(s) is added, including the name and address of the creditor, the amount owed and the type of claim added.
- (b) The notice to be included is:

NOTICE OF AMENDMENT TO SCHEDULES

The debtor has amended his or her bankruptcy schedules to include additional creditors. This amendment may decrease the amount paid to you under any plan. If you have any objections to the amendment, you must file them in writing, stating the specific ground(s) upon which your objection is based with the Clerk of Court, 201 St. Louis Street, Mobile, AL 36602, and serve a copy on the debtor and the debtor's attorney. You must file an objection within 10 days of the date you receive your copy of the amendment.

- (c) A petition, list, schedule, or statement may be amended as provided by Fed. R. Bankr. P. 1009 provided that such amendments are accompanied by a Cumulative Statement of Amendment which describes each specific amendment which is being made and which has previously been made to any petition, list, schedule, or statement.
- (d) In each instance in which the schedules, statement of affairs, statement of executory contracts or lists are amended, each page affected by the amendment shall be refiled in its entirety, unless otherwise authorized by the court. Such amendments shall consist of all pages of each schedule, statement, or list being amended, and shall not be submitted on a line-by-line basis.
- (e) The debtor or debtor's attorney shall serve any amendment on affected parties and the trustee. A certificate of service shall be filed evidencing service within 5 days of filing of the amendment.
- (f) When schedules are amended, the debtor or debtor's attorney shall provide a new matrix of creditors to the court.
- (g) The debtor or debtors shall sign all amendments, schedules, and statement of affairs.

Local Bankruptcy Rule 2016-1

COMPENSATION OF PROFESSIONALS

If a professional, whose compensation is subject to approval under section 330 of the Bankruptcy Code, has accepted a retainer from any source for future services in a bankruptcy case in this court, the professional must obtain court approval before making any draw against the retainer funds.

Local Bankruptcy Rule 2090-1

ATTORNEYS - ADMISSION TO PRACTICE

Admission to practice before the Bar of the U.S. District Court of the Southern District of Alabama shall constitute admission to practice before this court. Members of the Bar of this court shall comply with all of the requirements of S.D. AL. LR 83.5 and that rule is incorporated by reference into this rule.

Local Bankruptcy Rule 2090-2

ATTORNEYS - DISCIPLINE AND DISBARMENT

S.D. AL. LR 83.6 is incorporated by reference into this rule.

Local Bankruptcy Rule 3010-1

DIVIDENDS - CHAPTER 13

- (a) The chapter 13 trustee shall commence payments under a confirmed Chapter 13 Plan as soon as practicable after the claims bar date.

Local Bankruptcy Rule 3015-1

CHAPTER 13 PLANS

(a) Chapter 13 plans providing for payments to be made "outside the plan" or "direct" shall be construed by the court to mean the described payments are within the plan but are to be made directly by the debtor to the specified creditors.

(b) If any debtor requests automobile insurance coverage through the program in which premium payments are made by the chapter 13 trustee within the plan at any time after confirmation, the request shall be deemed a consent to an increase in the plan payment amount due in an amount sufficient to pay the monthly insurance premium. The court will enter an order increasing monthly plan payments in that amount without further notice or hearing upon the filing of an amended plan reflecting the election of coverage and the increased payment.

Local Bankruptcy Rule 3015-3

CHAPTER 13 - CONFIRMATION

A party objecting to confirmation of a Chapter 13 plan shall file a written objection by 12:00 p.m. on the day preceding the date set for the hearing on confirmation.

Local Bankruptcy Rule 4001-1

AUTOMATIC STAY - RELIEF FROM

(a) All motions for relief from stay and a copy of the order the movant proposes to have the court enter shall be served upon the debtor, debtor's counsel, chapter 7, 11, 12 or 13 trustee, if any, any other lienholder on the property at issue, any other party alleging any known interest in the property or matter at issue, and other affected parties requiring notice under Fed. R. Bankr. P. 4001. The motion must state, in bold type on the front page of the motion:

YOU MAY NEED TO FILE A RESPONSE TO THIS DOCUMENT WITHIN 10 DAYS FROM THE DATE YOU RECEIVE IT. PLEASE CONSULT AN ATTORNEY OR OBTAIN A COPY OF LOCAL RULE 4001 FROM THE BANKRUPTCY COURT, 201 ST. LOUIS STREET, MOBILE, ALABAMA 36602, (334) 441-5391.

(b) All motions for relief must be served within 3 days after filing of the motion with the court. The movant must file a certificate of service as to the motion. The movant shall be provided a notice of hearing by the clerk by mail for each motion for relief from stay. The movant shall serve the notice on all affected parties within 3 days after receipt. A certificate of service shall be filed as to the notice. The hearing date will be canceled in the circumstances set forth in paragraphs (c) and (d) below without further notice. Otherwise, the procedure explained in paragraphs (e), (f) and (g) shall apply.

(c) In chapter 7 cases, any party objecting to the relief must file an answer within 10 days after receipt of the motion stating with specificity all objections or defenses to the motion.

(1) If no objections are filed within the 10-day period, the court may grant the motion 25 days after the filing of the motion. The court may grant the motion without further notice or hearing and the matter will be removed from the hearing docket.

(2) If an objection has been filed, the matter will be heard on the date specified in the notice of hearing received from the court.

(d) If a motion for relief from the stay is filed under chapter 7, 11, 12 or 13 alleging that an item which requires insurance pursuant to the written agreement of debtor and movant is not insured, the debtor must provide proof that sufficient insurance is in place with the proper loss payees listed. This information must be provided in a written response to the motion filed no later than 10 days after the motion is served on the debtor and debtor's counsel. If no such response is filed, the court may grant the motion 25 days after the filing of the motion. The court may grant the motion without further notice or hearing and the motion will be removed from the hearing docket.

(e) As to all other motions for relief from stay, each matter will be set for a preliminary hearing within 30 days from the date the motion is filed with the clerk. The court, in its discretion, may consolidate the preliminary hearing with the final hearing for the purpose of granting the requested relief at the time of the preliminary hearing.

(f) A response to any motion described in paragraph (e) of this rule shall be served on the moving party by any party opposing relief not later than 8 days after the date of the preliminary hearing, if relief is not granted at the preliminary hearing. The response must state the grounds for opposition with specificity.

(g) It is the responsibility of the movant to notify all objecting parties of the date of the final hearing.

Local Bankruptcy Rule 4002-1

DEBTOR - DUTIES

(a) The debtor shall comply with the requirements of section 521 of the Bankruptcy Code with respect to the filing of the debtor's petition and all related matters. The attorney for the debtor, subject to the supervision and oversight of the Bankruptcy Administrator, shall to the extent possible verify that the debtor complies with the duties of this section of the Bankruptcy Code.

(b) Prior to the filing of the petition and schedules, the attorney for the debtor shall personally review and determine as far as possible that:

(1) The correct form or forms have been used;

(2) The petition has been completed and accurately reflects the information supplied by the debtor in the preparation of such form or forms;

(3) State and federal exemptions have been reviewed with the debtor and based upon the information supplied by the debtor the said attorney has assisted the debtor in properly claiming such exemptions with correct statutory citations;

(4) Based upon the information supplied by the debtor all of the debtor's assets and property have been properly identified;

(5) Based upon information supplied by the debtor all lien creditors, their security interest and collateral are accurately described;

(6) The debtor and the debtor's attorney have signed the petition at all the appropriate places.

(c) If an individual debtor's schedule of assets and liabilities include consumer debts which are secured by property of the estate, then the debtor shall comply with section 521(2)(A) and (B) of the Bankruptcy Code. The attorney for the debtor shall assist the debtor in complying with this Code section.

(d) The trustee pursuant to section 704 of the Bankruptcy Code shall ensure that the debtor shall perform his or her intentions as specified in section 521(2)(B) of the Bankruptcy Code.

Local Bankruptcy Rule 4003-1

EXEMPTIONS

(a) If a depository institution has funds on deposit or shares credited to the account of a debtor, the depository institution is authorized to transfer any pre-petition shares and/or deposits in its possession to the trustee if a trustee has been appointed. The depository institution shall notify the attorney for the debtor that the shares and/or deposits have been so transferred. By transferring the shares or deposits, the depository institution waives any and all lien rights in and to the shares and deposits including common law bankers liens, statutory liens and any contractual liens that it may have in the shares and deposits.

(b) Upon receipt of the funds, the trustee shall notify the debtor's attorney in writing that the shares or deposits have been claimed as exempt property or have not been claimed as exempt property, or that he/she contests the claim of exemption made by the debtor.

(c) If the debtor contests the trustee's claim, the debtor must respond to the trustee within 14 days or the debtor shall waive his/her rights to the shares or deposit.

(d) If the trustee in a chapter 7 proceeding finds the nonexempt funds to be of a balance so small that an effective administration of the estate cannot be accomplished, or if the debtor fails to respond within 14 days, the trustee may transfer the funds to the clerk to be deposited into the forfeiture fund; otherwise the funds shall be administered for the benefit of the estate.

(e) In chapter 11, 12, and 13 proceedings, if a trustee has been appointed, the trustee shall apply the funds as payment by the debtor to the debtor's plan of reorganization.

(f) In chapter 11 proceedings where a trustee has not been appointed, the depository institution may turn shares or funds on deposit over to the debtor-in-possession and shall give written notice of such turnover to the Bankruptcy Administrator.

Local Bankruptcy Rule 5005-1

FILING PAPERS - REQUIREMENTS

All pleadings, motions, briefs, and discovery requests and responses shall be filed on paper 8 1/2 x 11 inches in size. All other documents offered for filing shall be of that size if practicable. If a pleading, motion, brief, or discovery request or response does not comply with this rule and is tendered to the clerk for filing, the clerk shall accept and docket the same and shall inform the person filing of the requirement of this rule. Such tender shall be deemed the "filing" defined by Fed. R. Civ. P. 3 and 5(e), as incorporated by Fed. R. Bankr. P. 7003 and 7005. The party so informed will be allowed 10 days to substitute conforming papers. If the party does not file the conforming paper as ordered, the court will strike the pleading, motion or brief from the record.

Local Bankruptcy Rule 7004-1

SUMMONS

(a) A plaintiff or plaintiff's attorney shall prepare at least an original and 2 copies of each summons needed in any adversary proceeding. The clerk shall issue the summons upon the filing of the complaint and payment of any filing fee. The clerk shall place a copy of the issued summons in the court file and shall return the original and 1 copy to the plaintiff or plaintiff's attorney for service. The original and 1 copy will be returned to the plaintiff or plaintiff's attorney for service.

(b) Service of any pleading or notice of hearing on an insured depository institution in a contested matter or adversary proceeding in accordance with Fed. R. Bankr. P. 7004(h) shall be made by the movant. The movant shall provide the court with proof of service as required by Fed. R. Bankr. P. 7004(h).

Local Bankruptcy Rule 7026-1

DISCOVERY - REQUIRED DISCLOSURES

Every complaint filed to commence an adversary proceeding governed by Part VII of the Federal Rules of Bankruptcy Procedure shall contain a statement whether the pleader stipulates that Fed. R. Civ. P. 26(a)(1) will not apply to the adversary proceeding. The initial pleading or motion filed in response to a complaint filed to commence an adversary proceeding governed by Part VII of the Federal Rules of Bankruptcy Procedure shall contain a statement whether the responding pleader or movant stipulates that Fed. R. Civ. P. 26(a)(1) will not apply to the adversary proceeding. A failure to include the statement as required by this rule in a complaint, pleading, or motion shall be construed as a stipulation that Fed. R. Civ. P. 26(a)(1) will not apply.

Upon motion by a party or upon its own motion, the court will determine whether all parties to an adversary proceeding have stipulated that Fed. R. Civ. P. 26(a)(1) will not apply to the adversary proceeding. Upon consideration of such motion or on its own motion, and after due consideration of the objection of any party to the applicability of Fed. R. Civ. P. 26(a)(1), the court will enter an order directing whether and to what extent Fed. R. Civ. P. 26(a)(1) will apply to the adversary proceeding as the court determines appropriate in the circumstances of the action. (Revised September 17, 2001)

COMMENT: The present version of Local Rule 7026-1 makes the initial disclosures requirement of Fed. R. Civ. P. 26(a)(1) ["Rule 26(a)(1)"] inapplicable to adversary proceedings unless otherwise ordered by the court on its own motion or the motion of a party. Prior to December 1, 2000, Rule 26(a)(1), which is made applicable to adversary proceedings by Bankruptcy Rule 7026, expressly sanctioned the use of a local rule to render Rule 26(a) inapplicable. By amendment, Rule 26(a)(1) can now only be made inapplicable by stipulation of the parties or by order of the court on a case-specific basis. The Advisory Committee Notes commenting on the amendment to Rule 26(a)(1) stress the goal of "restor[ing] national uniformity to disclosure practice" in the District Courts except as may be stipulated by the parties or ordered by the court when "not appropriate in the circumstances of the action." It seems obvious that little consideration was given to the differing character of bankruptcy court adversary proceedings or to the general impracticality of the applicability of Rule 26(a)(1) to bankruptcy cases as recognized in the existing Local Rule 7026-1. The amendment to Rule 26(a)(1) added an identification of eight specified categories of proceedings that are to be automatically exempted from the applicability of Rule 26(a)(1). Based on the Advisory Committee Notes, the omission of bankruptcy proceedings from this list seems to have been premised on the notion that the Federal Bankruptcy Rules would deal with the issue: "Item (vii), excluding a proceeding ancillary to proceedings in other courts, does not refer to bankruptcy proceedings; application of the Civil Rules to bankruptcy proceedings is determined by the Bankruptcy Rules." Unfortunately, the amendment of the Federal Bankruptcy Rules to address specific amendments to the incorporated Rules of Civil Procedure is necessarily a delayed process.

Consistent with the premise of the existing Local Rule 7026-1, the general view of the Bankruptcy practitioners in the Southern District continues to be that the applicability of Rule 26(a)(1) to adversary proceedings will generally be inappropriate and counter-productive, and that a stipulation of inapplicability by the parties will generally be forthcoming in adversary proceedings. The Proposed Revised Local Rule is intended to reflect that view and provide a workable mechanism to deal with Rule 26(a)(1) in a manner consistent with the amendments effective December 1, 2000.

Local Bankruptcy Rule 9007-1

NEGATIVE NOTICE PROCEDURE

(a) The following motions, objections, and other matters may be considered by the court without an actual hearing under the negative notice procedure described in this rule if no party in interest files a written objection stating a specific ground or grounds on which the objection is based:

- (1) Motions to approve agreements relating to relief from the automatic stay, prohibiting or conditioning the use, sale, or lease of property, providing adequate protection, use of cash collateral, and obtaining credit pursuant to Fed. R. Bankr. P. 4001(d).
- (2) Motions to avoid liens on exempt property pursuant to Fed. R. Bankr. P. 4003(d).
- (3) Motions to use, sell, or lease property not in the ordinary course of business pursuant to Fed. R. Bankr. P. 6004(a) but not motions to sell property free and clear of liens or other interests pursuant to Fed. R. Bankr. P. 6004(c).
- (4) Notices of abandonment pursuant to Fed. R. Bankr. P. 6007(a) and motions to compel abandonment pursuant to Fed. R. Bankr. P. 6007(b).

- (5) Motions to approve compromises or settlements pursuant to Fed. R. Bankr. P. 9019(a).
- (6) Objections to claims pursuant to Fed. R. Bankr. P. 3007 other than objections joined with a demand for relief of the kind specified in Fed. R. Bankr. P. 7001.
- (7) Motions to employ (a) professional persons other than attorneys or (b) attorneys under section 327(e) of the Bankruptcy Code pursuant to Fed. R. Bankr. P. 2014.
- (8) Applications for compensation or reimbursement pursuant to Fed. R. Bankr. P. 2016.
- (9) Motions to extend the time for filing claims pursuant to Fed. R. Bankr. P. 3002(c) or Fed. R. Bankr. P. 3003(c).
- (10) Motions to extend the time for the filing of dischargeability complaints under Fed. R. Bankr. P. 4007.
- (11) Motions to increase the exclusivity periods for filing a chapter 11 plan pursuant to section 1121(d) of the Bankruptcy Code.
- (12) Disclosure statements filed pursuant to Fed. R. Bankr. P. 3016(c).
- (13) Motions for extension of the time for the assumption or rejection of executory contracts or leases pursuant to section 365(d)(1) of the Bankruptcy Code.
- (14) Approval of trustees' final accountings and compensation.
- (15) Objections to exemptions pursuant to Fed. R. Bankr. P. 4003(b).
- (16) Motions to increase or decrease payments to be made under a plan in a chapter 13 case.
- (17) Motions to amend Chapter 13 plans.
- (18) Motions to dismiss or convert cases pursuant to sections 707(a), 1112, 1208 and 1307.
- (19) Motions to reopen cases pursuant to section 350.
- (20) Motions to change the venue of a case from one division in this district to another.
- (21) Motions to assume or reject executory contracts pursuant to section 365.
- (22) Motions to redeem personal property pursuant to section 722.
- (23) Motions to abandon property pursuant to section 554.

(b) Motions, objections, and other matters filed pursuant to this negative notice procedure shall:

(1) Be filed with the clerk in duplicate and be served in the manner and on the parties as required by the provisions of the Federal Rules of Bankruptcy Procedure, Local Rule, or any order of court applicable to motions, objections, or matters of the type made and shall be filed with the proof of such service.

(2) Contain a negative notice legend prominently displayed on the face of the first page of the paper. The negative notice legend shall be in a form substantially as follows:

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files a written objection within [number] days from the date of service of this paper. If you object to the relief requested in this paper, you must file your written objection stating the specific ground or grounds on which your objection is based with the Clerk of the Court at 201 St. Louis Street, Mobile, AL 36602, and serve a copy on the movant's attorney, [name and address, and any other appropriate persons].

If you file and serve a written objection stating the specific ground or grounds on which your objection is based within the time permitted, the Court will schedule a hearing and you will be notified. If you do not file a proper written objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

(3) Be filed with duplicates of a proposed form of order granting the relief sought, a copy of which shall also be served with the motion, objection or other matter. In addition to any other requirements, the proposed form of order shall recite that:

(A) The motion, objection, or other matter, together with the proposed form of order, was served upon all interested parties with the negative notice legend informing the parties of their opportunity to object within 20 (or other) days of the date of service;

(B) No party filed a written objection stating a specific ground or grounds on which the objection is based within the time permitted; and

(C) The court therefore considers the matter to be unopposed.

(4) The number of days in which parties may object that is placed in the negative notice legend shall be 20 days except:

(A) In the case of motions to approve agreements relating to relief from the automatic stay, prohibiting or conditioning the use, sale, or lease of property, providing adequate protection, use of cash collateral, and obtaining credit pursuant to Fed. R. Bankr. P. 4001(d), the time shall be 15 days;

(B) In the case of objections to proofs of claim pursuant to Fed. R. Bankr. P. 3007, the time shall be 30 days;

(C) In the case of disclosure statements filed pursuant to Fed. R. Bankr. P. 3016(c), the time shall be 25 days.

(c) In the event a party in interest files a written objection stating the specific ground or grounds on which the objection is based within the time permitted in the negative notice legend, the court will schedule a hearing on the motion, objection, or other matter upon notice to the movant's attorney, the objecting party or parties, and others as may be appropriate.

(d) In the event no party in interest files a written objection stating the specific ground or grounds on which the objection is based within the time permitted in the negative notice legend as computed under Fed. R. Bankr. P. 9006(a) and (f), the court will consider the matter in chambers without further notice or hearing upon the proposed form of order granting the relief submitted by the movant.

(e) Nothing in this rule is intended to preclude the court from conducting a hearing on the motion, objection, or other matter even if no objection is filed within the time permitted in the negative notice legend.

Local Bankruptcy Rule 9029-1

LOCAL RULES - GENERAL

(a) These rules govern practice and procedure in all cases and proceedings in the United States Bankruptcy Court for the Southern District of Alabama in accordance with section 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 9029.

(b) These rules apply generally to all bankruptcy cases and proceedings. Upon application of a party in interest and for good cause shown, the court may excuse a party in interest from compliance with a requirement of these rules provided compliance with such requirement is not both separately mandated by the Federal Rules of Bankruptcy Procedure and outside the discretion of the court to excuse under the Federal Rules of Bankruptcy Procedure.

(c) These rules shall be interpreted in all circumstances to maintain their consistency with all acts of Congress and the Federal Rules of Bankruptcy Procedure and to avoid prohibition or limitation of the use of the Official Forms. In all cases not provided for by these Local Bankruptcy Rules or the Federal Rules of Bankruptcy Procedure, the court may regulate its practice in any manner not inconsistent with these rules or the Federal Rules of Bankruptcy Procedure.

(d) These rules supersede and rescind all local general orders except order nos. 6 and 7 which are attached for informational purposes.