

Proposed change to the local rules for the United States Bankruptcy Court for the Northern District of Indiana. New material is indicated by redline, and deleted material is indicated by ~~strikeout~~.

B-2002-2
Notice of Opportunity to Object to Motions

(a) Except as otherwise ordered, the court will consider the following matters without holding a hearing, unless a party in interest files a timely objection to the relief requested:

(1) Motions to approve agreements relating to relief from the automatic stay; providing adequate protection; or prohibiting or conditioning the use, sale or lease of property.

(2) Motions to approve agreements relating to the use of cash collateral.

(3) Motions for authority to obtain credit.

(4) In cases pending under Chapter 7, motions for relief from the automatic stay.

(5) Motions to avoid liens on exempt property.

(6) Motions to redeem personal property from liens.

(7) Applications for administrative expenses, including compensation for services rendered and reimbursement of expenses.

(8) Motions to extend the time for filing claims.

(9) Motions to extend the exclusivity periods for filing a Chapter 11 plan.

(10) Motions to extend the time to assume or reject executory contracts and unexpired leases.

(11) Motions filed by a trustee or debtor-in-possession to assume or reject executory contracts and unexpired leases.

(12) Motions to approve a modification to a confirmed Chapter 11, Chapter 12 or Chapter 13 plan.

(13) Motions to approve a compromise or settlement.

(14) Motions to transfer a case to another district or to another division in this district.

(15) Motions to approve transactions outside the ordinary course of business, except motions for the sale or lease of personally identifiable information.

(16) Motions to sell property free and clear of liens and/or to distribute the proceeds of sale, except motions to sell or lease personally identifiable information.

(17) Motions to abandon property of the estate.

(18) Motions for relief from the co-debtor stay of 11 U.S.C. § 1201 or § 1301.

(19) Motions for the joint administration or substantive consolidation of cases.

(20) Motions to compel the debtor to turnover or deliver property to a trustee.

(21) In cases under Chapter 12 and 13, motions for a discharge prior to the completion of payments under a confirmed plan (motions for hardship discharge).

(22) Motion of a party in interest to enter a final decree in a case under Chapter 11.

(23) Trustees' Applications to Employ Professionals after Notice to Creditors filed pursuant to N.D. Ind. L.B.R. B-2014-2(b).

(24) Applications to employ professionals retroactively.

(25) Motions for discharge in individual Chapter 11 cases.

(26) Motions to determine final cure pursuant to FRBP Rule 3002.1(h).

(b) Except as otherwise ordered by the court:

(1) no less than fourteen (14) days notice shall be given of the opportunity to file objections to:

(A) motions to approve agreements relating to relief from the automatic stay, providing adequate protection, prohibiting or conditioning the use, sale or lease of property;

(B) motions to approve agreements relating to the use of cash collateral;

(C) motions for authority to obtain credit;

(D) motions for relief from the automatic stay in cases pending under Chapter 7; and

(E) motions relating to abandonment of property from the estate.

(2) no less than twenty-one (21) days notice shall be given of the opportunity to file objections to the other motions subject to this rule.

In all cases, the time within which objections may be filed shall be measured from the date notice of the opportunity to object is mailed.

(c) Local Bankruptcy Form 3a (LBF-3a), Local Bankruptcy Form 3b (LBF-3b) or another form of notice substantially similar thereto shall be used to give creditors and parties in interest notice of the motion and the opportunity to object thereto. This notice **must** (1) identify the party seeking relief, (2) state the name of the motion and the date upon which it was filed, (3) briefly and specifically state what you are asking the court to do, (4) contain a brief summary of the ground for the motion or have a copy of the motion attached to it, (5) state the date by which objections to the motion are to be filed, where objections should be filed and upon whom copies should be served, (6) contain a statement to the effect that if no objections are filed by the date due the court may grant the relief requested without holding a hearing, (7) be dated as of the date it is served, and (8) be signed by counsel for the movant or the movant, if *pro se*, and contain the name, address and telephone number of the individual signing the notice.

(d) The moving party shall be responsible for properly completing the appropriate version of LBF-3 so that it contains the required information, serving it upon the entities required by the United States Bankruptcy Code, the applicable rules of bankruptcy procedure, the local rules of this court,¹ and/or any order of the court, and making due proof thereof. The failure to do so within seven (7) days of the date the motion was filed will be deemed to be a waiver of any time limits associated with ruling on the motion, including the time limits set forth in 11 U.S.C. § 362(e).

(e) The appropriate version of LBF-3 may also be adapted for use in those instances, not specifically covered by this rule, where the court directs that particular relief may be granted without a hearing following the expiration of notice to creditors. In those situations, in addition to complying with the other requirements of this rule, the notice shall be accompanied by a copy of the court's order authorizing notice to creditors and establishing the deadline for filing objections.

¹Pursuant to Rule 5003(e) of the Federal Rules of Bankruptcy Procedure, the clerk maintains a list containing the addresses of various state and federal governmental units. The list is available at the clerk's office and on the court's web site.

Commentary

Certain motions and applications can be granted after notice and the opportunity for a hearing. This Rule standardizes the practice and procedure for dealing with these motions. Paragraph (a) identifies the applications and motions to which this Rule applies. Paragraph (b) identifies the minimum amount of time between the date of service of the notice and the last day for objecting to the relief requested. Paragraph (c) governs the form of notice. Compliance with this paragraph is mandatory. Because the party filing a motion is responsible for preparing and mailing the notice to creditors, the failure to use a complete and proper form of notice may result in the court's refusal to rule on the motion until proper notice has been sent.

Paragraph (a)(24) has been amended to clarify its scope, by changing the phrase "nunc pro tunc" to the word "retroactively." The term "nunc pro tunc" has a precise meaning (*See In re IFC Credit Corporation*, 663 F.3d 315, 317-18 (7th Cir. 2011)), which relates to correcting a record to properly document an actual previous event, rather than to relate something back when the event did not previously occur. The notice requirement refers to a circumstance in which a professional has in fact rendered services or established a professional relationship prior to being approved as a professional by the court - the professional now seeks to authorize employment retroactively to the date upon which services were first performed or the professional relationship arose.

Paragraph (b) does not specify which creditors and parties in interest are entitled to receive notice. Not all types of relief require notice to all creditors. You should consult the Code, the Bankruptcy Rules, and the Local Rules and General Orders to determine which creditors and parties in interest are entitled to receive notice of a particular type of motion.

Local Forms LBF-3a and LBF-3b may be used to comply with paragraph (c) of the Rule. Form 3a is used if you intend to summarize the grounds for the motion; Form 3b is used if a copy of the motion or application is attached to the notice. In briefly stating the specific remedy or relief you want the court to grant, it is important to be both brief and specific. A Motion for Abandonment, for example, would be the name of the motion; the relief requested by the movant, briefly summarized, would be to abandon from the bankruptcy estate the debtor's 1995 Ford Tempo automobile. Or, for example, if the motion is to modify a confirmed Chapter 13 Plan, the relief requested might be to extend the plan payments from 36 months to 60 months. The requested relief should be stated with sufficient particularity in the notice that the reader can determine, from this statement alone, what it is that the movant is asking the court to do. Would your client be satisfied if the court granted the relief you request in this part of the notice, as worded? If the relief you mention is generic or ambiguous, an order granting that relief in those terms might be ineffectual. Specificity is needed, but brevity is also required. The statement of relief sought should be concise, clear, and informative.

If you will not be attaching the actual motion to the notice, then Form 3a should be used. In addition to the brief, particular statement of the relief you are asking the court to grant, you should provide a summary of the grounds for the motion. Here you should state, in summary form, the factual basis for seeking the relief. The statement of the grounds of the motion should not be argumentative; nor should it be generic. The purpose is to inform the creditor body of the essential facts supporting your motion or application.

Paragraph (d) of the Rule is a reminder that the moving party is responsible for preparing the notice to creditors, making certain it is in proper form, and serving the notice on the proper parties. In certain cases, parties who must receive the notice include all creditors and parties in interest; in other circumstances only particular creditors or parties are required to be served with the notice. The identity of the entities required to be served is beyond the scope of this Rule; the identity of parties required to be served is determined by the provisions of the Bankruptcy Code itself, applicable rules of bankruptcy procedure, the local rules of this court, or by any order of this court.

Paragraph (e) of the Rule provides for certain adaptations of the forms, in the event of circumstances not anticipated by the Rule for example, where the court independently orders notice to creditors with respect to motions, applications or relief, not specifically mentioned in paragraph (a) of the Rule.

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated October 9, 2014, paragraph (a)(24) was amended by changing the phrase “nunc pro tunc” to the word “retroactively” for clarification and adding additional explanatory commentary.

By Order Amending Local Bankruptcy Rules dated August 31, 2012, this rule was amended to include motions to disburse sales proceeds.

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

Pursuant to Order Amending Local Bankruptcy Rules dated May 11, 2009, paragraph (a)(25) was added to include motions for discharge in individual Chapter 11 cases.

Pursuant to Order Amending Local Bankruptcy Rules dated May 11, 2009, paragraph (a)(19) was amended to make a technical change to clarify the rule.

Pursuant to Order Amending Local Bankruptcy Rules dated August 31, 2007, paragraph (b)(1)(B) was amended to make a technical change to clarify the rule.

Pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules dated October 14, 2005, this rule was revised to better implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Pursuant to General Order 2005-01 dated April 28, 2005, paragraph (a)(24) was added to include applications to employ professionals nunc pro tunc.

Pursuant to Order Amending Local Bankruptcy Rules dated February 15, 2005, paragraph (a)(23) was added to include motions filed pursuant to new Rule 2014-2.

Pursuant to General Order 2003-01 dated April 28, 2003, new Rule 2002-2 became effective immediately.