

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA

IN THE MATTER OF:)
)
LOCAL RULES OF PRACTICE)
)
)

ORDER AMENDING LOCAL BANKRUPTCY RULES

Notice of proposed amendments to the local rules of this court was given to the bar and the public on August 24, 2009. The last date for submitting comments concerning the proposed amendments was September 23, 2009, and the court has considered all comments received. Effective January 1, 2010, the local rules of the court are amended as follows.

1. The court adopts a new Local Bankruptcy Rule, B-1017-1, titled “Dismissals for Failure to File Required Documents,” which reads:

(a) If an individual debtor in a voluntary case under Chapter 7 or Chapter 13 fails to file documents containing the information required by 11 U.S.C. § 521(a)(1)(A) and (B)(i-iii, v, vi) within 45 days following the date of the petition, unless that deadline has been extended or the trustee files an appropriate motion, the court will issue a notice reflecting the dismissal of the case pursuant to § 521(i)(1) on the 46th day after the date of the petition or as soon thereafter as may be practicable. A debtor or other party in interest who contends such a notice was issued in error may seek relief under Rule 9024(a) of the Federal Rules of Bankruptcy Procedure. In addition to the requirements of Local Bankruptcy Rule B-9023-1, any such motion shall:

(1) Specifically indicate where in the record documents containing the required information may be found;

(2) Describe how those documents provide all the information required; and

(3) State the date upon which they were filed.

(b) The absence of a notice reflecting dismissal of the case pursuant to § 521(i)(1) indicates that the court believes the debtor has filed the required information, and constitutes a presumption that such a dismissal has not occurred and that the case may continue to proceed. Notwithstanding the absence of such a notice,

a party in interest that contends § 521(i)(1) requires dismissal of the case may file a motion for an order dismissing the case pursuant to § 521(i)(2). Such a motion must:

- (1) Be filed electronically;
- (2) Refer to § 521(i)(2) in both the title and the docket text entered by the movant; and
- (3) Be accompanied by an affidavit from movant's counsel.

A motion which fails to so refer to § 521(i)(2) will be deemed to be a motion to dismiss for some other cause, a waiver of the court's need to act within seven days, and will be set for a hearing on notice to all creditors and parties in interest.

(c) The affidavit accompanying the motion for an order dismissing the case pursuant to § 521(i)(2) must:

- (1) Indicate that counsel has personally reviewed the docket and every page of every document filed in the case;
- (2) Specifically identify what information required by § 521(a)(1)(A) and (B)(i-iii, v, vi) the debtor has failed to file;
- (3) Specifically describe how the information that has been filed by the debtor does not provide what is required; and
- (4) State whether the debtor has sought an extension of time to file the required documents and whether the trustee has filed a motion asking the court to decline to dismiss the case.

2. Local Bankruptcy Rule B-2015-1 is amended to read as follows:

(a) Every trustee, Chapter 11 debtor in possession, or other debtor who operates a business under any chapter of the Bankruptcy Code shall file a monthly statement of the cash receipts and disbursements no later than twenty-one (21) days after the end of the calendar month. This report shall include:

- (1) A summary of all income and expenses for the reporting period;
- (2) A statement of the use of, reductions and additions to raw materials and inventory, crops, livestock or other items held or produced for sale;
- (3) A statement of the collection of and addition to accounts receivable;
- (4) A reconciliation of all income and expenses while operating under Title 11;

- (5) An itemized statement of all unpaid post-petition obligations;
- (6) A statement of insurance coverage;
- (7) Proof or certification of payment of all post-petition taxes due, including taxes withheld or collected from others; and
- (8) A statement identifying any federal or state tax returns filed during the reporting period, including verification of tax deposits.

The report may be in any appropriate form or format containing the minimum information required.

(b) In addition to the electronic service automatically effected by the court's ECF System, the report shall be served upon the chair of any committee.

(c) The failure to comply with the reporting requirements of paragraph (a) may constitute cause for conversion, dismissal, or the appointment (or removal) of a trustee pursuant to 11 U.S.C. § 1112.

3. Local Bankruptcy Rule B-4001-1(c) is amended to read as follows:

(c) In a case under Chapter 13, a motion for relief from stay and/or abandonment, other than a motion because a plan proposes to surrender property, will be set for such proceedings as the court deems appropriate, and must include the following information:

(1) Copies of documents upon which the claim is based, including loan documents and documents that evidence both the grant of the lien, security interest, mortgage or other encumbrance, and its proper perfection or proper recordation;

(2) The balance owing as of the date the petition is filed, and the date and amount of any payments received since the filing;

(3) The total arrearage as of the petition date, the number of pre-petition payments in arrears, and the amount of each such payment;

(4) The movant's best estimate of the value of the collateral and the basis for that value;

(5) The identity of any person or entity claiming an interest in the property that is the subject of the motion and of which movant is aware; and

(6) If the motion is based upon a post-petition payment default, the motion and/or exhibits thereto shall also contain the following:

(A) A legible post-petition payment history that sets forth the date each post-petition payment was received, the amount of each post-petition payment, and how each post-petition payment was applied;

(B) An itemization of any other expenses or fees that are due post-petition including attorney fees, filing fees, late payment fees, and escrow advance;

(C) The total dollar amount necessary to cure the post-petition debt as of a date certain; and

(D) The address where the current monthly payment is to be mailed if the mailing address is not listed in the movant's filed proof of claim or if the mailing address has changed.

The failure to provide the documentation and/or information required by this paragraph may result in the motion being stricken or denied.

4. Local Bankruptcy Rule B-4002-1 is amended to read as follows:

(a) In addition to the other duties imposed upon a debtor by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the debtor under any chapter shall:

(1) Cooperate with the United States trustee by furnishing such information as the United States trustee may reasonably require in supervising the administration of the estate; and

(2) Immediately upon the entry of an order for relief, give written notice of the bankruptcy to any court or other tribunal where an action or other proceeding is being maintained against the debtor, whether or not the matter has proceeded to final judgment, and to all the parties involved in any such action or proceeding

(b) The payment advices or other evidence of payment referred to in 11 U.S.C. § 521(a)(1)(B)(iv) need not be filed with the court.

5. The court adopts a new local bankruptcy rule B-4002-2, titled "Payments by Debtors in Chapter 13 Cases," which reads:

Notwithstanding the provisions of 11 U.S.C. § 1326(a)(1)(B) and 1326(a)(1)(C), the debtor shall not reduce the payments to the Chapter 13 trustee, and any payments required by these sections shall be paid by the trustee following proper notice and order of the court.

6. General Order 2006-01 is vacated effective with the amendment of Local Bankruptcy Rule B-1017-1.

7. General Order 2005-03 is vacated effective with the amendment of Local Bankruptcy Rules B-4002-1 and B-4002-2.

SO ORDERED.

Dated: December 16, 2009

/s/ Harry C. Dees, Jr.

Harry C. Dees, Jr., Chief Judge
United States Bankruptcy Court

/s/ Robert E. Grant

Robert E. Grant, Judge
United States Bankruptcy Court

/s/ J. Philip Klingeberger

J. Philip Klingeberger, Judge
United States Bankruptcy Court

/s/ Kent Lindquist

Kent Lindquist, Judge
United States Bankruptcy Court