

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-3011-1
Payment of Unclaimed Funds

(a) A ~~motion or other~~ request for the payment of unclaimed funds, which have been deposited with the court pursuant to 11 U.S.C. § 347(a), Fed. R. Bankr. P. 3010 or Fed. R. Bankr. P. 3011, must be made through an attorney who is a member of the bar of this court, unless the entity entitled to receive payment is a natural person making the request on its own behalf and not as an agent or other representative of the claimant. **This request shall be made using the court's local form: LBF-3011-1, Application for Payment of Unclaimed Funds.**

(b) The **application** ~~motion~~ shall be accompanied by an affidavit, together with any appropriate supporting documentation, executed by the claimant demonstrating the claimant's present entitlement to the funds. If the claimant is the entity for whose benefit the funds were originally deposited, the affidavit shall contain a statement to the effect that the right to payment has not, in any way, been transferred or assigned to any other entity.

(c) If the claimant is not a natural person, the affidavit required by paragraph (b) shall be executed by an officer, director, general partner, or other individual authorized to do so and shall be accompanied by proof that the individual executing the affidavit has been authorized to do so on behalf of the claimant and of the capacity in which the individual acts.

(d) **The clerk shall serve notice of the application** ~~The motion and a notice of the motion shall be served upon the United States Attorney, in the manner required by Fed. R. Bankr. P. 7004, and shall be accompanied by a proof of service showing the address to which service was directed and the manner in which service was made.~~ **If the claimant is not the entity for whose benefit the funds were originally deposited (Owner of Record), the clerk shall also serve notice of the application upon that entity.**

(e) In the absence of an objection or other response from the United States Attorney, **or Owner of Record, if applicable**, within thirty (30) days of the date the motion is filed, the court may determine the motion, without further notice or hearing.

(f) The failure to comply with the requirements of this rule may result in the ~~motion or other~~ request being denied.

Commentary (1994)

This rule is designed to implement 28 U.S.C. §2042, concerning the manner in which money deposited with the court is retrieved. Beyond requiring notice to the U.S. Attorney and proof of entitlement, the statute is silent as to how this is to be done. The Bankruptcy Code and Rules deal only with depositing the money with the court and do not speak to getting it out. The rule is largely prompted by the problems the court has recently encountered in this area due to “unclaimed funds locators.”

Paragraph (a) does nothing more than reiterate the court’s general rule requiring entities other than natural persons to appear through counsel. This seems to be appropriate since the motion asks for a court order, based upon a judicial determination that the movant has proven its entitlement to funds in possession of the clerk. Although such a restatement of the general rule is arguably unnecessary, it has been reiterated for ease of reference and for the sake of clarity. It is also legitimately applied to the scenario presented by fund locators. These individuals often are not attorneys and base their right to proceed upon a power of attorney authorizing them to collect the funds on the claimant’s behalf. Existing law in Indiana indicates that this is improper. *See Simmons v. Carter*, 576 N.E. 2d 1278 (Ind. App. 1991)(judgment rendered in an action initiated on behalf of a plaintiff by a non-lawyer, acting pursuant to a power of attorney, was void).

Paragraphs (b) & (c) are designed to ensure that the motion makes a proper showing (ie. presents a prima facie case) concerning the claimant’s right to distribution of the funds at the time the motion is made and that, in the case of a claimant other than a natural person, there is some type of verification that the individual executing the affidavit is what he purports to be - in other words, proof that the “president” of the corporation is really the president.

Paragraph (d) is nothing more than a restatement of the requirements of a proper proof of service.

Paragraph (e) is designed to implement the statutory requirement of notice to the U.S. Attorney, by ensuring that it as an appropriate opportunity to file any response.

Paragraph (f) serves only to provide public notice of the consequences of a failure to comply with the requirements of the rule.

Fill in this information to identify the case:

Debtor 1

First Name Middle Name Last Name

Debtor 2

(Spouse, if filing) _____
First Name Middle Name Last Name

United States Bankruptcy Court for the Northern District of Indiana

Case number: _____

APPLICATION FOR PAYMENT OF UNCLAIMED FUNDS**1. Claim Information**

For the benefit of the Claimant(s)¹ named below, application is made for the payment of unclaimed funds on deposit with the court. I have no knowledge that any other party may be entitled to these funds, and I am not aware of any dispute regarding these funds.

Note: If there are joint Claimants, complete the fields below for both Claimants.

Amount:

Claimant's Name:

Claimant's Current Mailing
Address, Telephone Number,
and Email Address:**2. Applicant Information**

Applicant² represents that Claimant is entitled to receive the unclaimed funds because (*check the statements that apply*):

- Applicant is the Claimant and is the Owner of Record³ entitled to the unclaimed funds appearing on the records of the court.
- Applicant is the Claimant and is entitled to the unclaimed funds by assignment, purchase, merger, acquisition, succession or by other means.
- Applicant is Claimant's representative (*e.g.*, attorney or unclaimed funds locator).
- Applicant is a representative of the deceased Claimant's estate.

3. Supporting Documentation

- Applicant has read the court's instructions for filing an Application for Unclaimed Funds and is providing the required supporting documentation with this application. Prior to filing this application, applicant and/or claimant(s) must read Northern District of Indiana Local Bankruptcy Rule B-3011-1, Payment of Unclaimed Funds, setting out the requirements for requesting payment of unclaimed funds.

¹ The Claimant is the party entitled to the unclaimed funds.

² The Applicant is the party filing the application. The Applicant and Claimant may be the same.

³ The Owner of Record is the entity for whose benefit the funds were originally deposited.

4. Applicant Declaration

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature of Applicant

Printed Name of Applicant

Address: _____

Telephone: _____

Email: _____

4. Co-Applicant Declaration (if applicable)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature of Co-Applicant (if applicable)

Printed Name of Co-Applicant (if applicable)

Address: _____

Telephone: _____

Email: _____

Instructions for Filing an Application for Payment of Unclaimed Funds

Unclaimed funds are held by the court for an individual or entity who is entitled to the money but who has failed to claim ownership of it. The United States Courts, as custodians of such funds, have established policies and procedures for holding, safeguarding, and accounting for the funds.

I. Searching Unclaimed Funds

To search unclaimed funds, use the Unclaimed Funds Locator at <https://ucf.uscourts.gov/>. Select INN - Northern District of Indiana from the dropdown list and enter the applicable search criteria. A search may also be completed in the court's offices located at:

- U.S. Bankruptcy Court, 1300 South Harrison Street, Fort Wayne, Indiana 46802
- U.S. Bankruptcy Court, 5400 Federal Plaza, Hammond, Indiana 46320
- U.S. Bankruptcy Court, 230 North Fourth Street, Lafayette, Indiana 47901
- U.S. Bankruptcy Court, 401 South Michigan St., South Bend, Indiana 46601

Additionally, you may contact the clerk's office at 574-968-2226 to verify unclaimed funds balances.

II. Filing Requirements for Payment of Unclaimed Funds

A. Payment of Unclaimed Funds

1. Any party who seeks the payment of unclaimed funds in the Northern District of Indiana must follow the requirements set forth in Local Bankruptcy Rule (LBR) B-3011-1, Payment of Unclaimed Funds. A copy of this rule is available on the court's website.

2. In accordance with LBR B-3011-1, a party shall make such request by using the court's local form: LBF-3011-1, Application for Payment of Unclaimed Funds. For the purposes of this application, the "Applicant" is the party filing the application, and the "Claimant" is the party entitled to the unclaimed funds. The Applicant and Claimant may be the same.

B. Supporting Documentation

1. Payee Information. Funds are payable to the Claimant. The order directing payment will provide further direction regarding any additional information that will be required to effect payment.

2. Documentation Regarding Proof of Ownership. Sufficient documentation must be provided to the court to establish the Claimant's entitlement to the funds. The required supporting documentation varies depending on the type of Claimant and whether the Claimant is represented. The following details what must accompany your Application for Payment of Unclaimed Funds based on the type of Claimant.

a. Owner of Record. The Owner of Record is the original payee entitled to the funds appearing on the records of the court. If the Claimant is the Owner of Record, the following additional documentation is required:

i. Owner of Record (Individual). An affidavit, together with any appropriate supporting documentation, executed by the claimant demonstrating the claimant's present entitlement to the funds. The affidavit shall contain a statement to the effect that the right to payment has not, in any way, been transferred or assigned to any other entity.

ii. Owner of Record (Business or Government Entity)

(a) Application must be signed by an authorized representative for and on behalf of the business or government entity;

(b) An affidavit, together with any appropriate supporting documentation, executed by the claimant demonstrating the claimant's present entitlement to the funds. The affidavit shall contain a statement to the effect that the right to payment has not, in any way, been transferred or assigned to any other entity; and

(c) The affidavit required by paragraph b shall be executed by an officer, director, general partner, or other individual authorized to do so and shall be accompanied by proof that the individual executing the affidavit has been authorized to do so on behalf of the claimant and of the capacity in which the individual acts.

If the Owner of Record's name has changed since the funds have been deposited with the court, then proof of the name change must also be provided.

b. Successor Claimant. A successor Claimant may be entitled to the unclaimed funds as a result of assignment, purchase, merger, acquisition, succession or by other means. If the Claimant is a successor to the original Owner of Record, the following documentation is required:

i. Successor Claimant (Individual). Documentation sufficient to establish chain of ownership or the transfer of claim from the original Owner of Record.

ii. Successor Claimant (Business or Government Entity)

(a) Application must be signed by an authorized representative for and on behalf of the successor entity;

(b) A notarized statement of the signing representative's authority;

(c) A notarized power of attorney signed by an authorized representative of the successor entity;

(d) Documentation sufficient to establish chain of ownership or the transfer of claim from the original Owner of Record.

iii. Deceased Claimant's Estate

(a) Certified copies of probate documents or other documents authorizing the representative to act on behalf of the decedent or decedent's estate in accordance with applicable state law (e.g., small estate affidavit); and

(b) Documentation sufficient to establish the deceased Claimant's entitlement to the funds.

c. Claimant Representative. If the Applicant is Claimant's attorney or other representative, the following documentation is required:

i. A notarized power of attorney signed by the Claimant (or Claimant's authorized representative) on whose behalf the representative is acting; and

ii. Documentation sufficient to establish the Claimant's entitlement to the funds, as set forth above.

C. Post-Filing Process

1. Any party objecting to the Claimant's request in the application shall, within thirty (30) days after filing the application, serve upon the Applicant and other appropriate parties and file with the court an objection to the application.

2. If no objection is filed with the court within thirty (30) days after the filing of the application, the application and accompanying documents may be considered by the court without hearing.