

Notice

Invitation for Public Comment Proposed Amendments to Uniform Local Rules

United States Bankruptcy Courts Northern and Southern Districts of Mississippi

The United States Bankruptcy Judges for the Northern and Southern Districts of Mississippi propose to adopt amendments to the Courts' Uniform Local Bankruptcy Rules to become effective June 1, 2018. The proposed amendments to the Uniform Local Bankruptcy Rules were developed in accordance with the requirements of Rule 9029, *Federal Rules of Bankruptcy Procedure*.

View/Download Proposed Local Rule Amendments:

The proposed amendments and the current version of the Courts' Uniform Local Rules may be viewed or downloaded from the Courts' websites. You may also view the proposed amendments at either office during regular business hours (Mon-Fri 8 a.m. to 5 p.m.).

United States Bankruptcy Court
Southern District of Mississippi
www.mssb.uscourts.gov

United States Bankruptcy Court
Northern District of Mississippi
www.msnb.uscourts.gov

Public Comment Invited:

The public comment period is **February 1, 2018 – March 2, 2018**.

Written comments may be submitted by email or to one of the mailing addresses listed below.

Submit comments by email to: msnb_courtmail@msnb.uscourts.gov

Alternatively, comments may be mailed to either:

Danny L. Miller, Clerk
United States Bankruptcy Court
Southern District of Mississippi
501 E. Court Street, Suite 2.300
P.O. Box 2448
Jackson, Mississippi 39225-2448

Shallanda J. Clay, Clerk
United States Bankruptcy Court
Northern District of Mississippi
Thad Cochran U. S. Courthouse
703 Highway 145 North
Aberdeen, Mississippi 39730



**Proposed Amendment to Uniform Local Rules
for the United States Bankruptcy Courts
Northern and Southern Districts of Mississippi
Effective June 1, 2018**

Proposed New Local Rule

Rule 1006-1. Filing Fee.

(b) Payment of Filing Fee in Installments.

(1) Application to Pay Filing Fee in Installments.

A debtor represented by counsel, that files an application to pay the filing fee in installments must file a disclosure from the debtor's counsel of an accounting for any fees paid by the debtor to debtor's counsel prior to filing the application. The disclosure shall be in a form as prescribed by the Clerk. Any portion of the filing fee received by counsel prior to the filing of the petition shall be paid to the Clerk at the time the petition is filed. Failure to comply with this subdivision may result in the denial of the application, the imposition of sanctions, or both, after notice and hearing.

(4) Fees Owed from Previous Case.

If a debtor files an application to pay filing fees in installments, and the debtor owes an unpaid fee from a previous case filed within five calendar years, the Court may deny the application and allow the debtor 14 days from the entry of the order to pay the entire filing fee for the current case. If the entire filing fee is not paid, the Court may dismiss the case without further notice or hearing.

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Proposed New Local Rule

Rule 1007-1. Lists, Schedules, Statements, and Other Documents; Time Limits.

(c) Time Limits.

(1) In chapter 13 cases, the debtor shall file the schedules, statements and other documents, and a proposed chapter 13 plan (the “preliminary documents”) within fourteen days of the order for relief pursuant to Fed. R. Bankr. P. 1007(c) and 3015(b). If a bankruptcy petition is not accompanied by the preliminary documents, the Clerk shall cause the debtor’s attorney (or the debtor) to be notified of the rule requiring such documents to be filed within fourteen days from the order for relief and the Court’s policy of enforcing the rule through the *sua sponte* dismissal of the case.

(2) For cause shown, the fourteen day deadline may be extended by the Court pursuant to Fed. R. Bankr. P. 9006(b)(1). As a general rule, the Court will grant a debtor only a single fourteen day extension to file the preliminary documents. Further requests for extension may be summarily denied by the Court. Any request for an additional extension must include a demonstration of good cause.

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Proposed New Local Rule

Rule 2014-1. Employment of Professional Persons.

(a) Application for and Order of Employment.

(1) In addition to the requirements of Fed. R. Bankr. P. 2014(a), an application seeking to employ multiple professionals, in contingency cases, shall include a specific allocation of fees, by percentage, among such professionals.

(2) An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals will not constitute approval of the professional's fee contract or compensation. A request for approval of a professional's fee contract or compensation will be made by separate application in accordance with Fed. R. Bank. P. 2016, and approved by a separate order.

(c) *Nunc Pro Tunc* Application.

(1) If an application for the approval of the employment of a professional seeks to make the authority retroactive to the commencement, the application must include:

- (A) An explanation of why the application was not filed earlier;
- (B) An explanation why the order authorizing employment is required *nunc pro tunc*;
- (C) An explanation, to the best of the applicant's knowledge, how approval of the application may prejudice any parties-in-interest.

(2) An application for approval of employment of a professional *nunc pro tunc* shall be approved only on notice and opportunity for hearing. All creditors in the case must be served with notice of the application.

**Proposed Amendment to Uniform Local Rule 4001-1
for the United States Bankruptcy Courts
Northern and Southern Districts of Mississippi
Effective June 1, 2018**

Proposed Local Rule Amendment

Rule 4001-1. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements.

(a) Relief from stay; prohibiting or conditioning the use, sale, or lease of property.

(1) Motion.

(A) Service.

A motion pursuant to section 362(d) and Fed. R. Bankr. P. 4001(a)(1) seeking relief from the automatic stay shall be served in the manner provided for by Fed. R. Bankr. P.s 9014 and 7004. Additionally, unless otherwise ordered by the court, such motion shall be served on any entity having a known lien on the subject property (excluding ad valorem taxing authorities) or that will be affected by the relief requested in the motion; on the United States Trustee; on the case trustee; on any chapter 11 creditors' committee (or its agent); on the creditors listed pursuant to Fed. R. Bankr. P. 1007(d) (only in the absence of duly appointed creditors' committees); and on any person or entity who has filed a request for the receipt of all notices in the case or proceeding and who has served such requests on the trustee or debtor in possession.

(B) Supporting documentation.

When a motion seeking relief from the automatic stay is filed, the moving party shall include in the motion and/or attach to the motion the following:

- (i)** A description of the subject property;
- (ii)** A complete and legible copy of movant's security agreements and security instruments which establish a valid lien encumbering the subject property;
- (iii)** The value of the subject property and the basis of the valuation; and,
- (iv)** The amount of the outstanding indebtedness secured by each lien encumbering the subject property as reflected by the schedules of the debtor(s) or such other amount as may be known by the movant.

(C) Initial 4001-1 conference.

The attorneys for movant or any objecting parties shall confer with respect to the issues raised by the motion in advance of the hearing for the purpose of determining whether a consensual order may be entered and/or for the purpose of stipulating to relevant facts, such as the value of the property and the extent and validity of any security instrument.

(D) Agreed order.

(i) If the moving creditor, the debtor(s) and the trustee agree as to the relief to be granted and if relief from the automatic stay as well as abandonment is not contested, an agreed order signed by the debtor(s) or the attorney for the debtor(s), the trustee and the moving creditor shall be submitted to the court for consideration no later than 14 days after the date scheduled for hearing on the subject motion. Parties to whom the order or judgment has been submitted shall promptly sign it or promptly contact the party who drafted it to express any objection to the form of the proposed order or judgment. The parties shall attempt to resolve any differences in the form of the order or judgment before submitting competing orders or judgments to the court.

(ii) As provided by Fed. R. Bankr. P. 4001(d)(4), the court may direct that the procedures prescribed by Fed. R. Bankr. P. 4001(d)(1)-(3) shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to Fed. R. Bankr. P. 4001(a)-(c) was sufficient to afford reasonable notice of the material provisions of the agreement and an opportunity for a hearing; otherwise, notice of the proposed agreed order shall be given to the appropriate creditors and parties in interest.

(E) Order Affecting Real Property.

Any Order affecting real property shall either incorporate the legal description of the real property in the body of the order itself, or attach a legal description of the real property as an exhibit to the order.

(3) Waiver or Reduction of Stay of Order.

Any proposed order granting relief from the automatic stay may not waive or reduce the 14-day stay unless the motion for relief from the automatic stay specifically states the basis for the waiver or reduction, although the moving creditor, debtor(s), and the trustee may agree to waive or reduce the 14-day stay. The Court may require that a hearing be held on a request for a waiver or reduction of the 14-day stay.

(b) Use of Cash Collateral and Financing Orders.

(1) Motion.

(A) Financing Motions.

Except as provided herein or in the Local Rules, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014 ("Financing Motions"). All Financing Motions filed as an expedited or emergency matters, including specifically First Day Motions as defined in Miss. Bankr. L.R. 9014-1 shall comply with Miss. Bankr. L.R. 9013-1(f) and 9014-1, in addition to this rule.

(B) Provisions to be Highlighted.

All Financing Motions must (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement and (c) justify the inclusion of such provision:

(i) All of the provisions described in Fed. R. Bankr. P. 4001(c)(1)(B) and (d)(1)(B).

(ii) Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection, priority or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters;

(iii) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);

(iv) Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out;

(v) Provisions that prime any secured lien without the consent of that lienor;

(vi) Provisions that grant liens on the debtor's property that is unencumbered by consensual liens;

(vii) Provisions that grant the secured creditor the right to exercise remedies upon a default by the debtor, without notice to the debtor and other parties-in-interest, a hearing, and further order of the court; and

(viii) Provisions or findings of fact that purport to bind a later appointed trustee to the agreement of the debtor.

(C) All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364).

(D) **Interim Relief.** When Financing Motions are filed with the Court on or shortly after the petition date, the Court may grant interim relief pending review by interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief shall be only what is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court will not approve interim financing orders that include any of the provisions previously identified in Sections (1)(A)(i)-(viii).

(E) **Final Orders.** A final order shall be entered only after notice and a hearing under Fed. R. Bankr. P. 4001. Ordinarily, the final hearing shall be held at least five (5) business days following the organizational meeting of the creditors' committee contemplated by 11 U.S.C. § 1102.

(c) Obtaining Credit.

The provisions of subpart (b) of this rule shall apply to all motions filed requesting credit under 11 U.S.C. § 364.

(e) Procedure Regarding Motion to Extend the Automatic Stay Pursuant to Section 362(c)(3)(B).

(1) Any party in interest seeking a continuation of the automatic stay pursuant to 11 U.S.C. §362(c)(3)(B), shall file, in accordance with Fed. R. Bankr. P. 9013, a motion and proposed order. The movant shall state whether continuation of the automatic stay is sought with respect to all creditors or, if less than all creditors, shall specify the creditor(s) with respect to whom the continuation of the automatic stay is sought. The movant also shall set forth facts to establish that the filing of the present bankruptcy case was in good faith.

(A) Motion to extend the automatic stay pursuant to § 362(c)(3)(B) must be filed within 7 days after the date of the filing of the petition.

(B) Pursuant to 28 U.S.C. § 1746, the debtor must file a *Declaration in Support of the Motion* (the “Declaration”) as an attachment to the motion. The Declaration shall be in the form as prescribed by the Clerk.

(C) The debtor must serve a copy of the motion and Declaration on all parties against whom the debtor seeks to continue the stay within 2 days of the filing of the motion and Declaration and file a certificate of service with the clerk.

(2) For a motion to continue the automatic stay filed on or within 7~~14~~ days of the date of filing the petition, the court shall set a hearing date no later than 30 days after the filing of the petition. For a motion to continue the automatic stay filed more than 7~~14~~ days after the date of the filing of the petition, the court shall set a hearing date with not less than 14 days notice. The mere filing of the motion will not extend the automatic stay beyond the 30th day after the filing of the petition. If the hearing date is more than 30 days after the date of the filing of the petition, it is incumbent on the debtor or other party in interest to seek an injunction (through the filing of a complaint and motion for a Temporary Restraining Order) to stop any creditor/lienholder collection efforts which may be scheduled to occur after the 30th day following the filing of the petition, but before the hearing on the motion to continue the automatic stay.

(3) A party in interest opposing a motion for continuation of the automatic stay must file a response to the motion. The opponent shall state specifically why the motion should not be granted or state any conditions or limitations that should be imposed upon granting a continuance of the stay.

(4) In the absence of a timely filed response, ~~and the debtor has filed an appropriate Declaration in support of the Motion, the Court may grant the motion without conducting a hearing.~~ ~~allow the motion seeking a continuance of the automatic stay without a hearing.~~

(f) Procedure Regarding Motion to Impose the Automatic Stay Pursuant to Section 362(c)(4)(B).

(1) Any party in interest seeking to impose the automatic stay pursuant to 11 U.S.C. §362(c)(4)(B), shall file, in accordance with Fed. R. Bankr. P. 9013, a motion and proposed order. The movant shall state whether imposing the automatic stay is sought with respect to all creditors or, if less than all creditors, shall specify the creditor(s) with respect to whom imposing the automatic stay is sought. The movant also shall set forth facts to establish that the filing of the present bankruptcy case was in good faith.

(A) Pursuant to 28 U.S.C. § 1746, the debtor must file a *Declaration in Support of the Motion* (the “Declaration”) as an attachment to the motion. The Declaration

shall be in the form prescribed by the Clerk and made available on the Court's website.

(B) The debtor must serve a copy of the motion and Declaration on all parties against whom the debtor seeks to impose the stay within 2 days of the filing of the motion and Declaration and file a certificate of service with the clerk.

(2) For a motion to impose the automatic stay pursuant to § 362(c)(4)(B), the court shall set a hearing with not less than 14 days notice except under extraordinary circumstance. The mere filing of the motion will not impose the automatic stay. It is incumbent on the debtor or other party in interest to seek an injunction (through the filing of a complaint and motion for a Temporary Restraining Order) to stop any creditor/lienholder collection efforts which may be scheduled to occur before the hearing on the motion to impose the automatic stay.

(3) A party in interest opposing a motion to impose the automatic stay must file a response to the motion. The opponent shall state specifically why the motion should not be granted or state any conditions or limitations that should be imposed upon granting the motion to impose the stay.

(4) In the absence of a timely filed response, and the debtor has filed an appropriate Declaration in support of the Motion, the Court may grant the motion without conducting a hearing.