
Delaware Bankruptcy Court Releases 2017 Local Rule Amendments

On February 1, 2017, the United States Bankruptcy Court for the District of Delaware (the “[Delaware Bankruptcy Court](#)”) released the 2017 version of the Local Rules for the United States Bankruptcy Court District of Delaware (Effective February 1, 2017) (the “[Local Rules](#)”). As a courtesy to our clients and friends, the Morris Nichols Business Reorganization & Restructuring Group has summarized the most significant revisions to the Local Rules relevant to business bankruptcy practice in the Delaware Bankruptcy Court. For your reference, we also provide links to the updated [2017 Local Rules](#) and a [redline version of the 2017 Local Rules](#) marked to show changes against the 2016 Local Rules.

Pursuant to Local Rule 1001-1(e), the 2017 version of the Local Rules governs all cases or proceedings filed after the effective date and also applies to proceedings pending on the effective date, except to the extent that the Court finds that it would not be feasible or would work an injustice.

A. Amendment Clarifying Relationship of Local Rules to District Court Rules

New sub-part (f) of Local Rule 1001-1 provides that, except as otherwise provided in the local rules for the District Court with respect to bankruptcy appeals, the District Court local rules shall apply to all filings in the District Court, including any briefing in connection with any motion to withdraw the reference from the Bankruptcy Court of a matter or proceeding. The addition of this sub-part clarifies the relationship between the District Court Rules and the Local Rules in light of: (i) the 2014 amendments to Part VIII of the Bankruptcy Rules (those governing bankruptcy appeals), which include detailed provisions addressing, among other things, the form, content and other aspects of briefing, motion practice and oral argument in connection with bankruptcy appeals; and (ii) the revisions to the District Court Rules effective August 1, 2016, that, among other things, now expressly defer to the requirements of the Bankruptcy Rules in connection with bankruptcy appeals. New sub-part (f) will most often apply in connection with contested matters and adversary proceedings that are filed in or withdrawn to the District Court, as well as in connection with motions to withdraw the reference.

B. Amendments Extending Certain Local Rules to Chapter 15 Cases

In a step that functions largely to conform the text of the Local Rules to accepted practice in the Delaware Bankruptcy Court, several Local Rules that on their face previously applied only to chapter 11 cases have been revised to extend to chapter 15 cases. Local Rules affected include the following:

- Local Rule 2002-1(b) (extending Local Rule identifying parties to be served with most motions to chapter 15 cases and clarifying that in chapter 15 cases such limited service rules do not apply to matters governed by Bankruptcy Rule 2002(q));
- Local Rule 2002-1(h) (adding a new sub-part which provides that in chapter 15 cases the foreign representative is normally responsible for the notice requirements under Bankruptcy Rule 2002(q) and any applicable duties under Local Rule 2002-1(f));
- Local Rule 4001-1(b) (making scheduling practices for stay relief motions filed in chapter 11 cases applicable to chapter 15 cases);

- Local Rule 7004-2(a) (extending scheduling practices for initial pretrial conferences previously used only in connection with adversary proceedings filed in connection with chapter 11 cases applicable as well to adversary proceedings filed in connection with chapter 15 cases);
- Local Rule 9013-1(m) (applying requirements for motions filed with petition in chapter 11 cases to comparable “first day” motions filed with petitions in chapter 15 cases); and
- Local Rule 9029-3 (extending requirements for filing of hearing agendas to chapter 15 cases).

C. Adoption of Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters

Newly adopted Local Rule 9029-2 contemplates the application of Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters set forth at Part X of the Local Rules (the “Cross-Border Guidelines”). The Cross-Border Guidelines may apply in any case involving cross-border proceedings relating to insolvency or adjustment of debt opened in a foreign court (*e.g.*, when a chapter 11 case is pending in the Delaware Bankruptcy Court and an ancillary bankruptcy or insolvency proceeding is pending in a foreign court). Local Rule 9029-2 is not self-executing; rather, for the Cross-Border Guidelines to apply in a particular case, the Delaware Bankruptcy Court must enter an order or approve a protocol that provides for their application.

The Cross-Border Guidelines are the product of collaboration among judges that are members of the Judicial Insolvency Network, which held its inaugural conference in Singapore in October 2016. International jurisdictions with participating judicial officers included the United States, Australia, British Virgin Islands, Canada, Cayman Islands, the United Kingdom, Hong Kong, Singapore, Bermuda, Japan and South Korea. The Cross-Border Guidelines are intended to provide stakeholders in jurisdictions that adopt them with uniform best practices for court-to-court cooperation and communication in connection with cross-border insolvency and bankruptcy proceedings. The Delaware Bankruptcy Court and the United States Bankruptcy Court for the Southern District of New York are among the first jurisdictions in the world to adopt the Cross-Border Guidelines.

D. Other Revisions to Specific Local Rules

1. Local Rule 2002-1: Notices to Creditors, Equity Security Holders, United States and United States Trustee

Sub-part (f)(viii) of Local Rule 2002-1 has been revised to require that the Notice and Claims Clerk provide public access to the complete proof of claim and any attachment thereto on the claims register, subject to Local Rule 9037-1.

2. Local Rule 2016-2: Motion for Compensation and Reimbursement of Expenses

Sub-part (e)(iii) of Local Rule 2016-2 has been revised to require that copying charges shall not exceed \$.10 per page for black and white copies and \$.80 for color copies and outgoing facsimile transmissions charges shall not exceed \$.25 per page.

3. Local Rule 3007-1: Omnibus Objection to Claims

Sub-part (e)(iv) of Local Rule 3007-1 has been revised to require that copies of proofs of claim and supporting documentation relating to an Objection based on Local Rule 3007-1(d)(iii) (claims objected to as amended or superseded) must be provided to the Delaware Bankruptcy Court.

4. Local Rule 3016-1: Redline or Blackline of Plan and Disclosure Statement Documents

New Local Rule 3016-1 provides that parties filing an amended disclosure statement, plan, or any document related thereto that has been amended post-filing, shall include a document that shows all changes made to the last version of the document on file.

5. Local Rule 4001-1: Procedure on Request for Relief from the Automatic Stay of 11 U.S.C. § 362(a)

Sub-part (b) of Local Rule 4001-1 has been revised to provide that if the hearing date noticed by the movant is not within 30 days of the filing of the motion, the movant is deemed to have consented to the stay remaining in effect until such time as the motion may be heard. The deemed consent feature was already part of sub-part (b). Accordingly, this revision is largely semantic.

Two aspects of sub-part (c) of Local Rule 4001-1 have been changed. First, whereas the former sub-part referred only to the filing of an affidavit, the revised sub-part now explicitly authorizes the filing of a declaration under 28 U.S.C. § 1746 in support of or in opposition to a motion for relief from stay where the movant is seeking to foreclose on its collateral. Second, new sub-part (c)(i)(A)(3) requires that the movant file, if applicable and in addition to the other requirements set forth in (c)(i)(A)(1)-(5), a current breakdown of postpetition arrears setting forth the unpaid monthly mortgage payments and any applicable late charges.

6. Local Rule 9010-2: Substitution; Withdrawal

Sub-part (b) of Local Rule 9010-2 has been revised to address a potential ambiguity in the prior language of this sub-part. The prior version of sub-part (b) stated that when a motion was required for an attorney to withdraw an appearance for a party such a motion must be “duly noticed to each party and served on the party client, at least fourteen (14) days before the motion is presented ...” As revised, sub-part (b) now expressly requires that such a motion be both filed and served at least fourteen (14) days before the motion is to be heard. Furthermore, language has been added to clarify that in advance of filing such a motion the filer need only confer with its party client and not with other parties in the case.

7. Local Rule 9013-1: Motions and Applications

The scope of Local Rule 9013-1 has been clarified so that Local Rule 9013-1 now explicitly applies to both motions and applications not elsewhere governed by the Bankruptcy Rules or Local Rules.

The language of sub-part (i) of Local Rule 9013-1 has been altered slightly to clarify that a request for leave for counsel to appear by telephone ordinarily will be entertained only in connection with a non-evidentiary hearing, but that such hearing need not necessarily be the first hearing on a particular motion or application. Further, such requests should be made to the presiding judge’s chambers by no later than 12:00 p.m. (ET) on the day before the scheduled hearing date unless the presiding judge’s chambers procedures fix a different deadline.

Except as stated above and for the previously discussed extension of parts of Local Rule 9013-1 to chapter 15 cases, the other changes to Local Rule 9013-1 are largely language revisions designed to improve the Local Rule’s readability and to use terminology consistent with what appears elsewhere in the Local Rules and the Bankruptcy Rules.

8. Local Rule 9018-1: Exhibits; Documents under Seal; Confidentiality

Sub-parts (a) and (c) of Local Rule 9018-1 are new and, together with substantial revisions to the language now appearing in renumbered sub-part (b), establish new procedures governing the retention and disposal of hearing and trial exhibits in connection with adversary proceedings and contested matters.

First, unless otherwise ordered by the Court, exhibits admitted into evidence must be retained by the attorney or pro se party who offered them into evidence until the later of the closing of the main bankruptcy case or the entry of a final, non-appealable order regarding any pending adversary proceeding, contested matter or pending appeal to which such exhibit relates.

Second, upon request, parties must make exhibits admitted into evidence available to any other party to copy (at such requesting party’s own expense), subject to any confidentiality, sealing or other orders or directives of the Delaware Bankruptcy Court.

Third, with respect to those exhibits already in the custody of the Delaware Bankruptcy Court or that hereafter are received into its custody, such exhibits shall be removed by the party responsible for the exhibits (i) if no appeal has been taken, at the expiration of the time for taking an appeal, or (ii) if an appeal has been taken, within thirty (30) days after the record on appeal has been returned to the Clerk. Parties failing to comply will be notified by the Clerk to remove their exhibits and, upon failure to do so within thirty (30) days of such notification, the Clerk may dispose of the exhibits.

Additionally, sub-part (d) (formerly sub-part (b)) has been revised to streamline the procedure for the scheduling of motions to seal filed in connection with objections, replies or sur-replies when the applicable hearing date is less than twenty-one (21) days after such document is filed. Unless otherwise ordered by the Delaware Bankruptcy Court, a motion to shorten notice of such a motion to seal will no longer be required and any objections thereto may be presented at the hearing.

9. Local Rule 9029-3: Hearing Agenda Required

Local Rule 9029-3 has been modified to clarify that in a chapter 7 asset case, chapter 11 case or chapter 15 case, the duty to prepare and file a hearing agenda and related materials falls upon counsel for the debtor, the statutory trustee, the foreign representative or the post-confirmation estate representative (*e.g.*, liquidation trustee, plan administrator), as applicable.

10. Local Rule 9033-1: Transmittal to the District Court of Proposed Findings of Fact and Conclusions of Law

Local Rule 9033-1 is new. This Local Rule provides that the Clerk will transmit to the District Court the proposed findings of fact and conclusions of law filed pursuant to Fed. R. Bankr. P. 9033 upon the expiration of time for filing objections and any response thereto. The addition of this Local Rule resolves potential ambiguities about whether the Clerk would transmit the proposed findings and conclusions to the District Court without further specific instruction to do so by the parties or the Delaware Bankruptcy Court.

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