**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF PENNSYLVANIA**

**Date: February 8, 2021**

**SUMMARY OF PROPOSED LOCAL BANKRUPTCY RULES AND FORMS PUBLISHED FOR COMMENT**

There are a total of five (5) court rules and three (3) forms being published for comment by the U.S. District Court. See Fed. R. Bankr. P. 9029(a); Fed. R. Civ. P. 83(a).

Both "clean" and either "red-lined" versions (or versions of the proposed amendments with the changes highlighted) are being published.

Below is a summary of the proposed rules and forms changes.

## L.B.R 2016-3

Presently, upon confirmation of a chapter 13 plan, the rules authorize debtor's counsel in chapter 13 cases to file an application for compensation, and the court to allow the requested compensation without the submission of attorney time records, if the requested compensation is within amounts specified in the rules. See L.B.R. 2016-3(a)(1). Such compensation is known colloquially as a "no-look" fee. It is a procedure that is widely used throughout the United States.

The proposed amendment modifies L.B.R. 2016-3 by adding a new subdivision (2) (and renumbers present subdivision (2) as subdivision (3)) to, to create an alternative procedural mechanism for requesting allowance of a no-look fee. The amendment permits counsel to make the request as a provision in the debtor's proposed chapter 13 plan. Confirmation of the plan will act as the court order allowing the requested compensation.

If a party wishes to object to the allowance of debtor's counsel's compensation in a chapter 13 case, the party may do so by objecting to confirmation of the plan, just as the party may object by filing a response to a request for allowance of compensation made by application under current procedures.

The proposed amendment to L.B.R. 2016-3 is intended to streamline the process of a court allowance of counsel fees to the debtor's counsel in chapter 13 while preserving the right of any party to object to allowance of compensation

## L.B.F. 3015.1

L.B.F. 3015.1 is the form chapter 13 plan that is mandatory in this district.

The amended form adds a provision designed to implement the proposed change in L.B.R. 2016-3 regarding the allowance of "no-look" compensation to the debtor's counsel through confirmation of the debtor's chapter 13 plan.

The other proposed changes in the form chapter plan are all stylistic.

## L.B.R. 9019-3

Proposed L.B.R. 9019-3 is a new local rule.

L.B.R. 9019-3 is designed to establish a court related alternative dispute resolution process called the Student Loan Management Program ("the SLM"), to facilitate communication between debtors and student loan creditors, thereby permitting them to explore potential consensual resolution options, including modified repayment agreements.

Under the proposed rule, the SLM is initiated by the filing of a motion, which may be granted (and an order entered commencing the SLM) if no objection is filed. However, participation in the SLM is entirely voluntary and does not affect the substantive legal rights of the participants or any other parties in the chapter 13 case.

The proposed rule also provides establishes certain "no-look" compensation levels for the debtor's counsel for provision of specified services in connection with the SLM.

## L.B.F. 9019-3A

In connection with proposed L.B.R. 9019-3, L.B.F. 9019-3A is one (1) of two (2) local procedural forms have been created.

L.B.F. 9019-3A is a notice provided to the creditor advising of the debtor's request for an order commencing the SLM and of the creditor's right to object.

## L.B.F. 9019-3B

In connection with proposed L.B.R. 9019-3, L.B.R. 9019-3B is the second two (2) local procedural forms that has been created.

L.B.R. 9019-3B is a form of order that the bankruptcy court will enter if no objection is filed to the debtor's request to commence the SLM. The order modifies the automatic stay to provide certain protections to a creditor that participates in the SLM..

## L.B.R. 4004-3

11 U.S.C. §1328(a) provides that when a chapter 13 debtor is entitled to the entry of an order of discharge, the court should enter the order "as soon as practicable after completion by the debtor of all payments under the plan."

Notwithstanding the statutory text, the historic practice in Eastern District of Pennsylvania has been for the court to enter a debtor's chapter 13 discharge after the chapter 13 trustee has filed the final report. The trustee files the final report only after all payments have been completed, all of the distribution checks have been cashed and the trustee's account for the debtor has "zeroed out," a process that typically takes several months after the debtor completes making the payments required by the confirmed chapter 13 plan. Presently, once the trustee files the final report, creditors are provided with a notice that gives them a deadline for filing an objection to the entry of the discharge order. If no objections are filed (and the debtor is otherwise eligible, as there are certain other requirements the debtor must satisfy), the court then enters the discharge order.

Under current L.B.R. 4004-3, a debtor who has completed his or her plan payments may file a motion requesting the entry of discharge and, if eligible, obtain the entry of the order before the trustee has filed the final report.

In order to expedite the entry of discharge orders in chapter 13 cases, consistent with the text and spirit of 11 U.S.C. §1328(a), the BOJ has concluded the current L.B.R. 4004-3 should be replaced in its entirety.

Under proposed L.B.R. 4004-3, the trustee will file a notice on the docket once the debtor has completed making the plan payments. After that notice has been filed, and upon debtor's filing of certain certifications that establish his or her eligibility to obtain a discharge, the court will provide creditors with the notice that gives them a deadline for filing an objection to the entry of the discharge order.

Under the proposed local rule, it is anticipated discharge orders may be entered several months earlier than under current practice, thereby eliminating unnecessary delay.

## L.B.R. 9014-2

L.B.R. 9014-2 identifies those motions that may be addressed by the bankruptcy court without providing a response period or a court hearing. Presently, there are sixteen (16) such motions that are listed in the rule.

Proposed L.B.R. 9014-2 will add another motion to the list, based on 11 U.S.C. §362(d)(4)(A)(i) and (ii).

11 U.S.C. §362(d)(4)(A)(i) provides, in general terms, that if a debtor has filed two (2) prior bankruptcy cases that have been dismissed within a year before filing a new case, the automatic stay does not go into effect upon the filing of the third case. 11 U.S.C. §362(d)(4)(A)(ii) provides that upon request of a party in interest, the court shall "promptly" enter an order

"confirming" that no stay is in effect.

Consistent with the statutory command that the court act "promptly" and because the applicability or non-applicability of §362(d)(4)(A)(i) will be apparent from the face of available court records, the proposed amendment to L.B.R. 9014-2 provides that a request for an order confirming that there is no automatic stay may be determined by the court in a summary fashion.

## L.B.R. 9014-3

L.B.R. 9014-3(h) provides, as a general rule, that a respondent has fourteen (14) days to respond to a motion, except as provided in L.B.R. 9014(j). L.B.R. 9014(j) identifies three (3) exceptions to that general rule.

L.B.R. 7005-1 provides that, in an adversary proceeding, that a party has twenty-one (21) days to respond to a dispositive motion "under L.B.R. 9014-3(h)." This cross-reference creates some ambiguity because L.B.R. 9014(h) states that the response period is fourteen (14) days.

To eliminate any ambiguity, proposed L.B.R. 9014-3(j) is amended to add a new subdivision (4) that references L.B.R. 7005-1(b) as another exception to the general fourteen (14) day response period for motions that are subject to L.B.R. 9014-3(h).