FILED
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

MAR 11 2010

THERESE BUTHOD, CLERK
United States, Bankruptcy Court
Eastern District of Oklahoma

IN RE:	)	
	)	
MODIFICATION OF LOCAL RULES	)	**GENERAL ORDER NO. 10-05**
FOR THE UNITED STATES	)	
BANKRUPTCY COURT FOR THE	)	
EASTERN DISTRICT OF OKLAHOMA	)	

ORDER

Upon review of the recently adopted Local Rules, the Court has found certain instances of scrivener's errors. In addition, a new Reaffirmation Agreement form which was changed subsequent to enactment of the Local Rules has been adopted, which requires modification of a local rule.

In order to correct the scrivener's errors, the Court has approved certain corrections to the Local Rules that were adopted on December 1, 2009. In addition, the Local Rule relating to reaffirmation agreements is modified to correspond with the new reaffirmation form. These corrections do not in any way alter the meaning or substance of the rules previously adopted by the Court.

Attached as Exhibit "A" to this order are the modifications made to the Local Rules to correct the scrivener's errors and to reflect the changes necessary based on the new Reaffirmation Agreement form.

IT IS THEREFORE ORDERED that the modifications outlined on Exhibit "A" and incorporated herein by reference are hereby adopted by this Court and become effective this date.

Dated this 11th day of March, 2010.

Tom R. Cornish
United States Bankruptcy Judge

Exhibit "A" to General Order No. 10-05

Modifications to the Local Rules for the United States
Bankruptcy Court for the Eastern District of Oklahoma

RULE 1007-I [INTERIM]-1. LISTS, SCHEDULES AND STATEMENTS

C. Requirement to Obtain Consumer Credit Counseling Prior to Filing Bankruptcy.

1. Official Forms Required. Under 11 U.S.C. §§ 109(h) and 521(b), and Bankruptcy Rule 1007-I [Interim](b)(3), an individual debtor must designate on the Official Bankruptcy Form Voluntary Petition, in the designated box, that Exhibit D has been completed and signed by the debtor (each spouse must complete a separate Exhibit D, if a joint petition is filed).

2. Failure to Comply with Exhibit D Requirements.

a. Failure to File Exhibit D. If a signed Exhibit D is not filed with the petition, the petition will be considered nonconforming and the Clerk shall send a deficiency notice. The Clerk shall be directed to serve a notice of deadline to correct the deficiency. If the debtor fails to file Exhibit D by the deadline set in the notice, the case may be dismissed without further notice of hearing.

b. Failure to File Certificate. If Exhibit D Box 2 is checked and a conforming credit counseling certificate is not filed within ~~fifteen (15)~~ fourteen (14) calendar days from the date the petition is filed, the case may be dismissed without further notice of hearing.

c. Failure to ~~File a Summary.~~ Summarize Exigent Circumstances. If Exhibit D Box 3 is checked and is not accompanied by a summary of exigent circumstances the case may be dismissed without further notice of hearing.

d. Failure to File Motion. If Exhibit D ~~Box 3 or~~ Box 4 is checked and is not accompanied by the required motion for determination by the Court the case may be dismissed without further notice of hearing.

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RULE 1017-1. CONVERSION TO CHAPTER 11, 12 OR 13

A. Conversion from Chapter 7 to Chapter 11, 12 or 13.

1. Procedure if sought by the debtor - The following procedure shall be employed for conversion by the debtor from Chapter 7 to Chapter 11, 12 or 13:

Conversion shall be accomplished by motion reflected in **Local Form 1017-1(A)(1)(a)**, pursuant to 11 U.S.C. § 706(a) and Bankruptcy Rule 1017(f)(2) and notice reflected in **Local Form 20A** Notice of Motion, Notice of Deadline to File Objection and Notice of Hearing, if Objection is filed, per Local Rule 9013-1(B).

2. Procedure if sought by a party in interest - The following procedure shall be employed for conversion by a party in interest from Chapter 7 to Chapter 11:

Conversion shall be accomplished by motion reflected in **Local Form 1017-1(A)(2)(a)** pursuant to 11 U.S.C. § 706(b) and Bankruptcy Rule 1017(f) and notice reflected in **Local Form 20A** Notice of Motion, Notice of Deadline to File Objection and Notice of Hearing, if Objection is filed, per Local Rule 9013-1(B).

3. Conversion from a Chapter 7 to a Chapter 12 or 13 by a party in interest is prohibited by 11 U.S.C. § 706(c) absent the debtor's consent.

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RULE 3020-1. CHAPTER 11 – CONFIRMATION

D. Pre-Confirmation Obligation. The Plan proponent of a Chapter 11 shall file **Local Form 3020-1(D)~~-1~~ (1)** Certificate of Acceptance of Plan, Report Payment of Fees. Individual Chapter 11 debtors shall file **Local Form 3020-1(D)(2)**, Certification for Confirmation Regarding Domestic Support Obligations and Filing of Required Tax Returns prior to the confirmation hearing in compliance with 11 U.S.C. § 101 (14A) or § 129(a)(14).

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RULE 4008-1. REAFFIRMATION

A. All Reaffirmation Agreements shall substantially conform to the Administrative Office of the U.S. Courts Director's Procedural Form B240A and Official Form B27, Reaffirmation Agreement Cover Sheet, and shall include the following information:

1. Mark the appropriate presumption box.

2. Include the full legal name of the creditor.

3. If the creditor is a credit union, ensure that the proper box is checked. If the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (codified at 12 U.S.C. § 461), and the debtor is represented by counsel, the Court does not have the authority to review the agreement for undue hardship. See 11 U.S.C.§ 524(m)(2).

4. Insert the amount agreed to be reaffirmed.

5. Include ~~one of three options when reporting~~ the interest rate in the "ANNUAL PERCENTAGE RATE" section of the Reaffirmation Agreement.

a. ~~If the debtor is reaffirming open ended credit agreements such as lines of credit or credit card debt, then use the appropriate subpart to report the interest rate. Otherwise, these spaces should remain blank.~~

~~b.~~ Use the appropriate subpart to report the APR for fixed rate credit agreements or variable rate credit agreements. ~~other than open end credit agreements or the simple interest rate and leave the remaining spaces blank.~~

~~c. Use the appropriate subpart to report variable interest rate loans or an adjustable rate mortgage. Disclose the APR and the terms of any adjustment mechanism. This information should also be included in the description of the credit agreement in Part B of the reaffirmation agreement.~~

6. Include the description of the collateral that secures the debt to be reaffirmed. If the collateral is a vehicle, include the VIN. If the collateral is real estate, include the legal description or the address of the property. Include the original purchase price of the collateral or the original amount of the loan that is being reaffirmed.

7. ~~If the~~ Include the repayment schedule ~~is selected that only indicates~~ indicating the amount of the ~~first~~ payment and terms prior to the date of the bankruptcy and after the Reaffirmation and describe how any ~~states that the~~ "future payment amount" may be different, either explain the changes or attach a copy of the note or other documentation that will show the terms of the agreement including when and how the payments can change. ~~The terms of any variability should also be described in Part B of the Reaffirmation Agreement.~~

8. If the monthly payment amount is relatively fixed (i.e. mortgage payments including property tax and insurance escrow amounts), include the amount and include the total number of payments.

9. Briefly describe the credit agreement or attach a copy.

10. If any terms of the Reaffirmation Agreement have been renegotiated, describe the changes to the credit agreement.

11. All parties reaffirming the agreement should sign the Reaffirmation Agreement. If only one debtor has an obligation on the underlying debt, a joint debtor should not be a party to the agreement. The agreement must also be signed and dated by the creditor. **If only one debtor is a party to the agreement, and the case is a joint case, there must be attached documentation to show that only one debtor has an obligation to the debt.**

12. If the debtor is represented by counsel during the course of negotiating the agreement, counsel shall sign the Reaffirmation Agreement and check the box, <u>if a presumption of undue hardship has been established and the debtor is able to make the required payment.</u> The attorney's signature on the Reaffirmation Agreement indicates that the attorney represented the debtor during the course of negotiating the agreement.

13. The debtor's ~~current~~ **<u>present</u>** income and expenses should be used when completing Part ~~D~~ **<u>II.</u>** If the debtor has surrendered property or reduced expenses, subtract those changes from Schedule J expenses to arrive at ~~current~~ <u>present</u> expenses. If the debtor listed the debt being reaffirmed as an expense on Schedule J, subtract that expense from Schedule J expenses to arrive at ~~current~~ <u>present</u> expenses.

14. If the debtor's ~~current~~ **<u>present</u>** income and expenses differ from those shown on Schedules I and J, it is essential to explain those changes. Without an explanation for any changes in income and expense, it is impossible for the Court to determine whether a presumption of undue hardship exists or to evaluate the impact of reaffirmation of the debt on the debtor. PROVIDING A DETAILED EXPLANATION OF HOW THE DEBTOR CAN AFFORD TO MAKE THE REQUIRED PAYMENTS IS THE SINGLE MOST IMPORTANT FACTOR DETERMINING IF UNDUE HARDSHIP EXISTS.

15. The debtor(s) must sign and date the statement in support of the reaffirmation agreement. This is a verification that the debtor has received information regarding rescission of the reaffirmation agreement.

B. All reaffirmation agreements must be filed no later than sixty (60) days after the first date set for the meeting of creditors to be enforceable. Any reaffirmation agreement filed after the 60th day is rendered unenforceable, unless a timely Motion to Delay the Discharge or Enlarge the Time to File a Reaffirmation Agreement is filed by the debtor, using the proper event code in order for the discharge to be delayed to allow a reaffirmation to be filed.

C. At any time before the Court enters a discharge or before the expiration of the sixty (60) day period that begins on the date the reaffirmation agreement is filed with the Court, whichever occurs later, the debtor has the right to rescind or cancel the reaffirmation agreement. The debtor **shall** notify the creditor in writing that the reaffirmation agreement is rescinded or

canceled in order to cancel the agreement. The debtor may use **Local Form 4008-1(C)** for this creditor notification.

D. If a presumption of hardship is established, the debtor signs a motion for court approval, or the debtor is not represented by counsel during the course of the negotiating of the Reaffirmation Agreement, the debtor and any joint debtor that has an obligation on the Reaffirmation Agreement shall appear at a Reaffirmation hearing.

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RULE 7016-1. PRE-TRIAL PROCEDURES

J. Trial. Seven (7) days prior to the trial, counsel shall mark all exhibits and provide sufficient copies for opposing counsel, and two (2) copies for the Judge. Plaintiff's exhibits shall be marked numerically. Defendant's exhibits shall be marked alphabetically. Each counsel shall also file and provide the Court Recorder Deputy with a witness list containing the names and addresses of each witness and an exhibit list of exhibits set forth sequentially in the order intended to be identified and admitted in accordance with **Local Form ~~7016-1(J)~~ 9017-2(A).** See also **Local Rule 9017-2.** During the trial, copies of the exhibits shall be provided to the Court Recording Deputy as they are introduced and admitted into evidence.

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RULE 8007-1. COMPLETION OF RECORD ON APPEAL

A. Within fourteen (14) days after filing the notice of appeal, appellant must order from the Court Recorder Deputy, on this Court's **Local Form 8007-1(A)** for Transcript Orders, the portions of the transcript that will be needed on appeal that are not already on file. Fed.R.App.P.10(b). If no transcript is needed, appellant must file a written statement to that effect with the Clerk of the Bankruptcy Court, which may be included in the Designation of Record. When appellant orders less than the entire transcript, appellant must file and serve on the appellee a description of the parts of the transcript that have been ordered and a statement of the issues that he or she intends to present on appeal. Appellee has ~~twenty (20)~~ twenty-one (21) days after service to file and counter-designate additional portions of the transcript and place an appropriate transcript order with the Court Recorder Deputy. All transcript orders must have sufficient payment provided in advance to the transcriber.

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RULE 9013-1. MOTIONS; FORM AND SERVICE

B. Notice of Opportunity for Hearing. Except for requests for relief specified in subsection ~~(D)~~ (C), if a motion or other request for relief is filed for which the Code does not require a hearing but permits an opportunity for a hearing as defined by 11 U.S.C. § 102(1), the movant shall include: **A separate Notice on this Court's Local Form 20A titled:** "Notice of Motion, Notice of Deadline to File Objection to Motion and Notice of Hearing, if Objection is

Filed." Hearing dates, times, locations and the last date for filing an objection to a motion are found on the court's website at www.okeb.uscourts..gov then click on the heading for Hearing Dates for Motions for use to complete the Form 20A. The form must be filed the same day the hearing and objection date are taken from the website. The response time for objections shall always be a date certain in the Notice. The date certain established by the Court on the website will be calculated as fourteen (14) days from the date of entry on the docket which includes the three (3) days for service by mail in accordance with Bankruptcy Rule 9006 and Local Rule 9006-1(a), unless a different response time is prescribed by applicable statute, rule or order.

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RULE 9014-1. CONTESTED MATTERS

A. Applicability of Notice of Opportunity for Hearing Procedure. Local Rule 9013-1 applies to motions or objections initiating contested matters, except to the extent excluded by **Local Rule 9013-1(E).** Initial hearings will be considered preliminary in nature unless the Court orders otherwise. The order resulting from the initial hearing shall govern further scheduling of the evidentiary hearing procedure. See **Local Rule 9014-1~~(F)~~(E).**

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