

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**



NOTICE OF PROPOSED CHANGES TO LOCAL RULES

In accordance with Federal Rule of Bankruptcy Procedure 9020, the Court proposes to adopt a new Local Rule 7056-1, Motions for Summary Judgment or Summary Adjudication, and revise existing Local Rules 9004-1, General Requirements of Form, and 9014-1, Motion Calendar and Procedure.

A copy of the proposed changes, together with comment, is attached to this notice.

Public comments on the proposed changes are invited. Comments should be directed to the Court, care of Richard G. Heltzel, Clerk of Court, U.S. Bankruptcy Court, 501 I Street, Suite 3-100, Sacramento, CA 95814, **by no later than April 2, 2001**.

*For the Court
Richard G. Heltzel*

March 1, 2001

PROPOSED NEW LOCAL RULE 7056-1

Motions for Summary Judgment or Summary Adjudication

- (a) Motions for Summary Judgment or Summary Adjudication. Each motion for summary judgment or summary adjudication shall be accompanied by a “Statement of Undisputed Facts” which shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon to establish that fact. The moving party shall be responsible for the filing with the Court of all evidentiary documents cited in the moving papers.
- (b) Opposition. Any party opposing a motion for summary judgment or summary adjudication shall reproduce the itemized facts in the Statement of Undisputed Facts and admit those facts which are undisputed and deny those which are disputed, including with each denial a citation to the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon in support of that denial. The opposing party may also file a concise “Statement of Disputed Facts,” and the source thereof in the record, of all additional material facts as to which there is a genuine issue precluding summary judgment or adjudication. The opposing party shall be responsible for the filing with the Court of all evidentiary documents cited in the opposing papers. If a need for discovery is asserted as a basis for denial of the motion, the party opposing the motion shall provide a specification of the particular facts on which discovery is to be had or the issues on which discovery is necessary.
- (c) Stipulated Facts. All parties-in-interest may jointly file a stipulation setting forth a statement of stipulated facts to which all parties-in-interest agree. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.
- (d) Summary Adjudication. This Rule shall apply to motions for orders specifying material facts that appear without substantial controversy pursuant to FRCivP 56(d), except that the proposed “Statement of Undisputed Facts” and the “Statement of Disputed Facts” shall be limited to the facts which the moving party asserts are without substantial controversy and the facts the opposing party contends are in dispute.

Comment: Adapted from Local District Rule 56-260 of the U.S. District Court for the Eastern District of California.

PROPOSED REVISION TO LOCAL RULE 9004-1

General Requirements of Form

- (a) General Format of Papers. All documents presented for filing with the court, other than those on Official Bankruptcy Forms and other forms approved by the Court, shall be on white paper, with numbered lines in the left margin, 8½" x 11" in size, and shall otherwise comply with all other applicable provisions of these Rules. Matter contained thereon shall be typewritten or presented by some other clearly legible process, without erasures or interlining which materially defaces the document, and shall appear on one side of each sheet only. Documents shall be double-spaced except for the identification of counsel, titles, headings, footnotes, quotations, exhibits, and descriptions of real property. Each page shall be numbered consecutively at the bottom.

(b) Counsel Identification and Signature. The name, address, telephone number, and the California State Bar membership number (not applicable to counsel for the United States) of all counsel (or, if in propria persona, of the party) and the specific identification of each party represented by name and interest in the proceeding (e.g., Debtor Smith, Creditor Bank, Plaintiff Roe, Defendant Doe) shall appear in the upper left-hand corner of the first page of each document presented for filing, except that in the instance of multiparty representation reference may be made to the signature page for the complete list of parties represented.

(c) Signatures. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

(d) Facsimile Documents. For the purposes of this Rule, the image of the original manual signature appearing on a facsimile (fax) copy filed pursuant to this Rule shall constitute an original signature for all court purposes. The document, which itself may be in whole or in part a fax copy, must be marked “original” prior to submission to the Clerk’s Office for filing. The originator of the document, or in the case of an affidavit or certification, the presenting attorney or party, is required to maintain the document containing the original manual signature until the conclusion of the case or proceeding, including any appeal and remand after appeal. In the event there are multiple signatories to a document, the filing party or attorney shall retain the originally signed document(s). The Court may require that the document containing the original manual signature be filed. This Rule does not provide for documents to be transmitted via fax directly to the Clerk’s Office. Documents directly faxed to the Clerk or to a chambers of the Court will not be filed, lodged, received, returned, or acknowledged.

Comment: New paragraphs (c) and (d) are adapted from Local District Rule 7-131 of the U.S. District Court for the Eastern District of California.

PROPOSED REVISION TO LOCAL RULE 9014-1
Motion Calendar and Procedure

PART I
Motion Calendar

(a) Setting Motions for Hearing. Parties shall set for hearing all motions (including motions in adversary proceedings), objections and other matters, for which a hearing is necessary, as required by Part I of this Rule.

(b) Motion Calendar. Each judge of the court will maintain his or her department's individual motion calendar. Information as to the time and dates of each department's calendar may be obtained from the court’s web site at www.caeb.uscourts.gov or from the Clerk. All hearings shall be set on the calendar of the department to which the case is assigned.

(c) Motion Control Number. A Motion Control Number (designated as MC No.) shall be included by all parties immediately below the case number on all motions and other papers. In motions filed in adversary proceedings, it shall be placed immediately below the adversary number. The Motion Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. (Example: the first Motion Control Number assigned to attorney John D. Doe would be MC No. JDD-1, the second MC No. JDD-2, the third MC No. JDD-3, and so on. This sequence would be repeated for each specific bankruptcy case and adversary proceeding in which said attorney or law firm filed motions.) Once a Motion Control Number is assigned, all related papers filed by any party shall have the same number, provided, however, that motions for reconsideration and countermotions shall be treated as separate motions with a new Motion Control Number assigned in the manner provided for above.

(d) Time and Place of Hearing. All motions and other papers shall contain in the caption the date, time, and place of the hearing and the department in which the hearing will be held.

(e) Evidence on Motions. Factual contentions not appearing of record involved in motions shall be presented and heard upon declarations under penalty of perjury as permitted by FRCivP 43(e), as incorporated in FRBP 9017. Each declaration shall:

- (1) Identify the declarant, the party or parties on whose behalf it is submitted, and the motion to which it pertains;
- (2) Be served and filed with the motion, opposition or reply to which it relates;
- (3) Contain only factual evidentiary matter or expert opinion, conform as far as possible with the requirements of FRCivP 56(e) and avoid mere general conclusions or arguments;
- (4) Specify the source and basis of any statement made upon information and belief and the reasons why it cannot be made upon personal knowledge;
- (5) Identify and authenticate documents and exhibits offered in support of the motion or opposition unless such documents and exhibits are already in the record and specifically referred to in the motion or opposition; and,
- (6) If a declaration of an expert is submitted in support of or in opposition to a motion, it shall include a statement of the qualifications of the expert.

Declarations failing to substantially comply with all of the foregoing requirements may not be admitted into evidence. The judge may, in his or her discretion, require or allow oral examination of witnesses; however, such examination will generally not be permitted except upon prior order of the Court, so that all parties and the Court will be aware that testimony will be presented.

(f) Hearing and Oral Argument; Removal from Calendar; Tentative Rulings. Unless the matter has been removed from calendar, upon the call of the motion, the judge may hear appropriate and reasonable oral argument. Alternatively, the motion may be submitted upon the record and briefs on file if the parties stipulate thereto, or the judge so orders, subject to the power of the judge to reopen the matter for further briefs, oral argument or both.

Parties can ascertain which matters have been removed from calendar and can view tentative rulings by checking the court's web site at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

(g) Related and Countermotions. Any countermotion or other motion related to the general subject matter of the original motion that the responding party may desire to make shall be served and filed by such party with the Clerk no later than the time opposition is otherwise required to be filed to the original motion, so that all related motions in the case can be heard and decided at the same time. In the event such countermotion or other related motion is filed by the responding party, the judge may continue the hearing on the original and all related motions so as to give the responding moving parties reasonable opportunity to serve and file oppositions and replies to all pending motions. No written opposition need be filed to any related matter unless the matter is continued upon the moving party's request. Nothing herein shall be construed to require a counter or related motion.

(h) Continuances. Requests for continuances of hearings on the motion calendar may be made to the Court on the scheduled hearing date or may be made in writing by motion and notice thereof. Stipulations for continuance shall be executed by all parties and shall be filed with the court at least one (1) court day prior to the hearing. Alternatively, stipulations for continuance may be transmitted telephonically to the Clerk (attention: calendar clerk).

(i) Opportunity for Hearing.

- (1) The Notice of Opportunity for Hearing (NOH) as defined in 11 U.S.C. §102(1) shall:
 - (i) Succinctly describe the action to be taken;
 - (ii) State that unless written objections and/or a request for a hearing are served on the moving party and filed with the Clerk on or before the date specified in the notice, the action shall be taken;
 - (iii) Provide a minimum of ten (10) days after service (or the longer periods required by, e.g., FRBP 2002 or 3007) for the filing of the request for hearing or objections by a party-in-interest; and,
 - (iv) Be filed with the Clerk and served by the moving party on all creditors, the debtor, the trustee or other persons as appropriate or required.

- (2) No hearing date shall be set by the moving party unless an objection or a request for hearing is made by a party-in-interest, in which event, the moving party shall promptly set the matter for hearing by filing a notice of hearing with the Clerk and serving the notice on the objecting or requesting party or parties at least ten (10) days before the hearing date.
- (3) If no objection or request for hearing is timely filed, the moving party may proceed to take any proposed action that does not require Court approval. If Court approval is required, or if the moving party desires that the Court ratify the proposed action, the moving party shall submit a proposed order, together with a copy of the certificate of service in respect to the NOH and a declaration under penalty of perjury that to the best of his/her knowledge no request for a hearing nor objections have been filed or served on him/her; ***provided, however, that each judge shall have discretion to determine whether an order is necessary or appropriate.***

(j) Emergency Motions.

- (1) All motions for emergency orders for substantive or affirmative relief shall be heard in open court or in chambers at such time as is convenient to the judge. All such motions shall be accompanied by a memorandum containing the title and number of the case, the nature of the motion and the name of counsel for the opposite party, if known, and a sworn affidavit or declaration of a witness competent to testify on the matter stating the facts justifying the matter being heard without the normal hearing and service procedure.
- (2) Except for good cause shown, it shall be the duty of the party applying: (i) to make a good faith effort to advise counsel for all other parties known to be affected or interested by the proposed order by telephone and confirming letter or fax (if time permits) of the date, time, and substance of the proposed order; and (ii) to advise the Court in writing of efforts to contact other counsel or parties, and whether any other counsel or party, after such efforts to advise them, has requested to be present at the time the motion is presented to the Court.

(k) Orders Shortening Time. In appropriate circumstances and for good cause shown, the judge may order that the time for serving a motion and the notice of hearing thereon may be shortened. When time for service is shortened to ten (10) calendar days or less, no written opposition is required. When time for service is shortened to eleven (11) calendar days or more, the opposition shall be filed not later than two (2) court days prior to the hearing.

PART II

Hearing Dates, Notice, and Opposition Requirements

(a) Scope of Part II. Part II of this Rule shall apply to all matters scheduled for hearing on a motion calendar.

(b) Notice.

- (1) Any motion, together with any accompanying papers and notice of hearing with the date, time, place and department filled in, shall be filed with the Clerk by the moving party. Unless a different time is required by the Federal Rules of Bankruptcy Procedure or these Rules, the hearing shall be set for not less than twenty-two (22) calendar days from date of filing and service. The notice shall include a statement that pursuant to Part II (c) of this Rule, opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Clerk by the responding party not less than five (5) court days preceding the date or continued date of hearing. Service by the moving party of the notice of hearing, and, when appropriate, the motion and other supporting pleadings, shall be made on or before the date of filing. Proof of service of the notice of hearing, the motion and supporting papers shall be filed with the Clerk concurrently with said pleadings or not more than three (3) court days after the filing of the motion. Proofs of service should be in the form of certificates of service which shall be attached as the last document to the pleadings served. If the proof of service is filed separately, copies of the papers served shall not be attached thereto; rather, the proof of service shall refer to the papers served.
- (2) When notice must be served on all creditors and other parties-in-interest, a properly drafted notice, without the motion or supporting papers, which succinctly and sufficiently describes the nature of the relief being requested and sets forth the essential facts necessary for a party to determine whether or not to oppose the motion, need be the only paper served on those parties who have not requested special notice or who are not directly affected by the requested relief.

(c) Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Clerk by the responding party not less than five (5) court days preceding the date or continued date of hearing. A responding party who has no opposition to the granting of the motion may serve and file a statement to that effect, specifically designating the motion in question. Without good cause, no party will be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

(d) Reply. The moving party may, not less than two (2) court days prior to the date of the hearing, serve and file with the Clerk a reply to any written opposition filed by a responding party. The evidentiary record closes upon the filing of the reply.

Comment: A change is proposed to Paragraph (b) (1) of Part II, Notice, to require that every notice include a statement that pursuant to Part II(c) of this Rule, opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Clerk by the responding party not less than five (5) court days preceding the date or continued date of hearing. The rule is also changed to clarify that the minimum notice period for certain matters may vary from 22 days if a

different period is required pursuant to the Federal Rules of Bankruptcy Procedure or these Local Rules. Other changes are stylistic.