

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

NOTICE OF PROPOSED CHANGES TO LOCAL BANKRUPTCY RULES

November 13, 2002

In accordance with Federal Rule of Bankruptcy Procedure 9029, the Court proposes to adopt a new Local Bankruptcy Rule 3007-1, Objections to Proofs of Claim, and revise existing Local Bankruptcy Rules 4001-1, Motions for Relief from Stay and 9014-1, Motion Calendar and Procedure.

The following is a summary of the proposed changes:

New Local Bankruptcy Rule 3007-1 establishes procedures for filing and setting for hearing objections to proofs of claim, incorporating a 44 day notice period, with the option of an abbreviated 30 day notice period. If the abbreviated procedure is employed, a responding party need not file written opposition prior to the scheduled hearing.

Revised Local Bankruptcy Rule 4001-1 reduces the number of required copies of the Relief from Stay Information Sheet (EDC Approved Form 3-468) from two to one and requires the form to be filed as a separate document. The revision also includes three new requirements applicable to stay relief motions filed in chapter 12 and 13 cases. Other provisions of the existing rule are incorporated in the proposed revision to Local Bankruptcy Rule 9014-1.

Revised Local Bankruptcy Rule 9014-1 eliminates the existing 22 day notice period, replacing it with a choice of a 28 day or 14 day period. If a movant chooses the 14 day notice period, a responding party need not file written opposition prior to the scheduled hearing. This abbreviated procedure provides a faster means of obtaining a hearing on a motion than the present 22 day period. Additional changes to the rule are intended to conform the local rule to pending changes to Federal Rule of Bankruptcy Procedure 9014 by providing a procedure for requesting an evidentiary hearing.

Full text copies of the proposed changes may be viewed, downloaded, and printed from the [What's New](#) and the [Local Bankruptcy Rules](#) pages of the Court's web site, www.caeb.uscourts.gov or may be obtained at any Clerk's Office public counter.

Public comments on the proposed changes are invited. Comments shall be received no later than **December 13, 2002** and may be addressed to:

United States Bankruptcy Court
c/o Richard G. Heltzel, Clerk of Court
501 I Street, Suite 3-100
Sacramento, CA 95814

or by email addressed to:

rules-comments@caeb.uscourts.gov

LOCAL RULE 3007-1

Objections to Proofs of Claim

(a) Where necessary to the proper and timely administration of the bankruptcy estate, the debtor, debtor-in-possession, or trustee, as appropriate, shall, and other parties in interest may, examine proofs of claim filed in the case and file objections to those proofs of claim.

(b) Each objection shall include the name of the claimant, the date the proof of claim was filed with the Court, the claim number assigned by the Court, and the amount of the claim. Unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed. A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim. A complete copy of the proof of claim as filed with the Court shall be included as an exhibit or appendix to the objection.

(c) In the event objections are filed to more than one proof of claim, a separate objection shall be filed to each proof of claim.

(d) Amount of Notice on Objections.

(1) Objections set on 44 days' notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(d)(2), the objecting party shall file and serve the objection at least forty-four (44) calendar days prior to the hearing date.

(i) Opposition. Opposition, if any, to the sustaining of the objection shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) calendar days preceding the date or continued date of the hearing. Without good cause, no party shall be heard in opposition to an objection at oral argument if written opposition to the objection 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 sustaining of the objection or may result in the imposition of sanctions.

The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to FRCivP 43(e) as made applicable by FRBP 9017. If the responding party does not so consent, the opposition shall include a separate

statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute.

(ii) Reply. The objecting party may, at least seven (7) calendar days prior to the date of the hearing, serve and file with the Court a reply to any written opposition filed by a responding party.

If the objecting party does not consent to the Court's resolution of disputed material factual issues pursuant to FRCP 43(e), the objecting party shall file and serve, within the time required for a reply, a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute.

Unless the Court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of the reply.

(iii) Prior to the noticed hearing date, counsel may bring to the Court's attention relevant judicial opinions published after the date the opposition or reply was filed by filing and serving a Statement of Recent Development, containing a citation to and providing a copy of the new opinion without argument. No memoranda, declarations or documents other than those specified in this Local Rule shall be filed without prior Court approval.

(2) Objection set on 30 days' notice. Alternatively, the objecting party may file and serve the objection at least thirty (30) calendar days prior to the hearing date. When fewer than forty-four (44) calendar days' notice of a hearing is given, no party in interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

(e) An objection to a proof of claim shall be served on the claimant at the address on the proof of claim.

LOCAL RULE 4001-1

Motions for Relief from Stay

(a) Motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014-1. However, if a movant wishes to invoke the time constraints of 11 U.S.C. § 362(e), the motion shall be set for hearing pursuant to paragraph (f)(1) of LBR 9014-1.

(b) Relief from the automatic stay will not be granted if the movant utilizes the notice and opportunity for hearing procedure defined in 11 U.S.C. § 102(1). A hearing must be set on every motion for relief from the automatic stay. See LBR 9014-1.

(c) Relief from Stay Information Sheet. The movant shall file and serve as a separate document a completed Relief from Stay Information Sheet (EDC Approved Form 3-468) with each motion for relief from the automatic stay.

(d) Motions In Chapter 12 and 13 Cases. If relief from the automatic stay is sought in a chapter 12 or 13 case, the motion shall include the following:

(1) When the motion alleges the debtor has failed to make postpetition payments to the movant with respect to real or personal property, including but not limited to real estate, vehicle, or lease payments, the movant shall include a verified statement showing all postpetition charges, all payments received postpetition, the dates thereof, and the charges to which each of the payments was applied.

(2) If the chapter 12 or 13 plan requires the debtor to make payments on account of a secured claim directly to the movant, the movant shall continue to mail to the debtor the customary statement or payment coupon. In any motion for relief from the automatic stay, the movant shall state for each postpetition payment allegedly not made by the debtor whether the movant has sent to the debtor a statement or payment coupon.

(3) If the motion for relief from the automatic stay asserts that the debtor has failed to make plan payments to the chapter 12 or 13 trustee, the movant shall include in the motion a certification that the movant or its counsel conferred with the chapter 12 or 13 trustee before the motion was filed and verified the delinquency. This requirement may be satisfied by downloading from the trustee's website a report indicating that plan payments are delinquent and

attaching a copy of the report to the motion.

Local Rule 9014-1
Motion Calendar and Procedure

(a) Applicability. Parties shall file, serve, and set for hearing all contested matters, including motions, whether filed in the bankruptcy case or in an adversary proceeding, objections, applications, and other matters for which a hearing is necessary (hereafter referred to collectively as motions), in accordance with this Local Rule, any other applicable Local Rules, and the applicable provisions of Title 11 of the United States Code and the Federal Rules of Bankruptcy Procedure. Except as otherwise provided in LBR 3007-1, this Local Rule shall apply to objections to proofs of claim.

(b) Motion Calendar.

(1) Each judge of the Court shall maintain his or her department's individual motion calendar. All hearings shall be set on the motion calendar of the department to which the case is assigned. A party shall self-set a motion for hearing on the dates and times specified on each department's motion calendar.

(2) Each judge's motion calendar and instructions for self-setting hearings are posted on the Court's web site, www.caeb.uscourts.gov, and are also available from the Clerk's Office at the public counters.

(c) Docket Control Number.

(1) In motions filed in the bankruptcy case, a Docket Control Number (designated as DC No.) shall be included by all parties immediately below the case number on all pleadings and other documents filed in support of or opposition to motions.

(2) In motions filed in adversary proceedings, the Docket Control Number shall be placed immediately below the adversary number.

(3) The Docket 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 Docket Control Number assigned to attorney

John D. Doe would be DC No. JDD-1, the second DC No. JDD-2, the third DC 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.

(4) Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice, shall include the same number. However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.

(d) Format and Content of Motions and Notices.

(1) Format. All pleadings and documents filed in support and in opposition to a motion shall contain in the caption the date and time of the hearing and the courtroom in which the hearing will be held. All pleadings and documents filed in support and in opposition to a motion shall conform with the Court's Guidelines for the Preparation of Documents, effective December 1, 1999, or as thereafter amended.

(2) Separate Notice. Every motion shall be accompanied by a separate notice of hearing stating the docket control number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, and the courtroom in which the hearing will be held.

(3) Contents of Notice. The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.

(4) Service of Notice Only. When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.

(5) Legal Authority. Each motion, opposition, and reply shall cite the legal authority relied upon by the filing party.

(6) Evidence. Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested.

(e) Service and Proof of Service.

(1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

(2) A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) calendar days after they are filed.

(3) The proof of service for the motion and all pleadings and documents filed in support of the motion shall be appended either to the notice of hearing or filed as a separate document.

(4) The proof of service for opposition and reply pleadings and documents shall be filed as a separate document.

(5) When the proof of service is filed as a separate document, copies of the pleadings and documents served shall not be attached to it. Instead, the proof of service shall identify the title of the pleadings and documents served.

(f) Amount of Notice.

(1) Motions set on 28 days' notice. Unless additional notice is required by the Federal Rules of Bankruptcy Procedure or these Local Rules, or the moving party elects to give the notice permitted by LBR 9014-1(d)(2), the moving party shall file and serve the motion at least twenty-eight (28) calendar days prior to the hearing date.

(i) If the motion is a motion for relief from the automatic stay, it shall be the duty of the moving party to set a hearing within thirty (30) days of the filing of the motion. The failure of the moving party to set the hearing within thirty (30) days shall be deemed a waiver of the time constraints of 11 U.S.C. § 362(e).

(ii) Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) calendar days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall 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.

The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to FRCivP 43(e) as made applicable by FRBP 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute.

(iii) Reply. The moving party may, at least seven (7) calendar days prior to the date of the hearing, serve and file with the Court a reply to any written opposition filed by a responding party.

If the moving party does not consent to the Court's resolution of disputed material factual issues pursuant to FRCivP 43(e), the moving party shall file and serve, within the time required for a reply, a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute.

Unless the Court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of the reply.

(iv) Prior to the noticed hearing date, counsel may bring to the Court's attention relevant judicial opinions published after the date the opposition or reply was

filed by filing and serving a Statement of Recent Development, containing a citation to and providing a copy of the new opinion without argument. No memoranda, declarations or documents other than those specified in this Local Rule shall be filed without prior Court approval.

(2) Motions set on 14 days' notice. Alternatively, unless additional notice is required by the Federal Rules of Bankruptcy Procedure or these Local Rules, the moving party may file and serve the motion at least fourteen (14) calendar days prior to the hearing date.

(i) This alternative procedure shall not be used for a motion filed in connection with an adversary proceeding.

(ii) The use of this alternative procedure in connection with a motion for relief from the automatic stay shall be deemed a waiver of the time limitations contained in 11 U.S.C. § 362(e).

(iii) When fewer than twenty-eight (28) calendar days' notice of a hearing is given, no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

(3) Orders Shortening Time. In appropriate circumstances and for good cause shown, the Court may order that the amount of notice of a hearing on a motion be shortened to fewer than fourteen (14) calendar days. Unless otherwise ordered, when the time for service is shortened to fewer than fourteen (14) calendar days or less, no written opposition is required.

(4) "First Day Orders". In chapter 11, 12, and 13 cases, preliminary hearings on motions for "first day orders," including, but not limited to, motions to use cash collateral, borrow money, and pay employees, shall generally be heard by the Court within two business days of the filing of the petition. Counsel for the debtor or the trustee shall contact the chambers of the assigned judge immediately upon the filing of the petition to ascertain what notice will be required and the date and time of the hearing.

(g) Evidentiary Hearings.

(1) If the Court determines that there is a disputed material factual issue that must be resolved before the relief requested in the motion can be granted or denied, testimony shall be taken in accordance with FRCivP 43(a) unless the parties waive such right or consent to proceeding under FRCivP 43(e).

(2) Each judge's procedures for scheduling an evidentiary hearing are posted on the Court's web site, www.caeb.uscourts.gov, and are also available from the Clerk's Office at the public counters.

(h) Oral Argument; Removal from Calendar; Tentative Rulings. Unless the assigned judge determines that the resolution of the motion does not require oral argument, he or she 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 are resolved without oral argument 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. Parties appearing telephonically shall view the tentative ruling prior to the hearing.

(i) Related and Countermotions. Any countermotion or other motion related to the general subject matter of the original motion set for hearing pursuant to this Local Rule may be filed and served no later than the time opposition to the original motion is required to be filed. In the event a counter or 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 and 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 by the Court. Nothing herein shall be construed to require the filing of a counter or related motion.

(j) Continuances. Continuances of hearings must be approved by the Court. A request for a continuance may be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties in interest oppose or support the request for a continuance.

(k) Opportunity for Hearing.

(1) The notice of opportunity for hearing procedure, as defined in 11 U.S.C. § 102(1), may only be used as permitted in the Court's General Order dealing with chapter 13 practice. In all other matters, if an order is necessary or is desired by the moving party, the motion should be set for hearing pursuant to this Local Rule.

(2) When the notice of opportunity for hearing procedure is used, the notice 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.

(3) 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 in accordance with this Local Rule.

(4) 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.

(1) Sanctions. Failure to comply with the requirements of this Local Rule or the provisions of other Local Rules applicable to motion practice shall constitute grounds, without limitation, to deny the motion, strike late-filed pleadings and documents, continue the hearing on the motion, deem the moving party to have waived the time limitations of 11 U.S.C. § 362(e), deny the offending party the ability to appear by telephone, or assess other appropriate sanctions.