

VBA Bankruptcy Committee
Bench-Bar Brown Bag Lunch Meeting
with
Colleen A. Brown, U.S. Bankruptcy Judge
Tuesday January 23, 2007
12:30 pm – 2:00 pm
United States Bankruptcy Court, Rutland
Participation may be in person or via the telephone

The topics for this information discussion may include:

1. Update from Task Force re post-petition invoices to debtors (Jan Sensenich)
2. Subcomm proposal to revise the Vt presumptively reasonable fee in ch 13 cases (Jan Sensenich)
3. Is 90 min each month too long for bench bar meetings? If so, what types of topics could we cut? CM/ECF tips? Only new stuff?
4. Follow up to last month's discussion re certificates of service referring to NEFS: it is fine to refer to the NEF as mode of service BUT the reference should identify which NEF (the one issued in connection with this document or dated __) AND the docket entry needs to state that the C/S is included when it is part of the main document, see Standing Order # 07-01 (attached), AND it is still necessary to indicate how non-electronic notice recipients are receiving notice (i.e. postage prepaid first class mail, personal service).
5. New Clerk's Office process for APs and appeals - Becky Collette to handle all APs and appeals
6. Judicial misconduct process (on web page)
7. *Nunc Pro Tunc* order required when financial management certificates are filed late.
See Standing Order # 07-02 (attached)
8. Chapter 13 scheduling: all motions to be set for 2:30 (except those that are evidentiary and set by courtroom deputy) – at least for now
9. CM/ECF tip of the day – Kathy Ford
10. Bench-Bar Brown Bag Lunch Meeting Schedule – Next meeting February 13, 2007, Burlington.

These Bench-Bar Lunches are coordinated by the Bankruptcy Court Chambers and Clerk's Office.
Questions? Call Thomas J. Hart at 802-776-2002

No fee, no pre-registration required. Soft drinks and bottled water will be provided.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF LOCAL RULES
OF PRACTICE AND PROCEDURE
IN BANKRUPTCY COURT,
DISTRICT OF VERMONT**

STANDING ORDER # 07-01

**TO REPLACE STANDING ORDER #06-05 AND
AMEND VT. LBR 7005-1 REGARDING PROPER
FORMAT FOR CERTIFICATES OF SERVICE**

WHEREAS Standing Order # 06-05 amended local practice to require that all attorneys who are registered users of the Case Management/Electronic Case Filing system (CM/ECF) accept service and notification of pleadings and documents by e-mail through the CM/ECF system's automatic transmission of the Notice of Electronic Filing (NEF), and that transmission of the NEF shall be considered equivalent to service of the pleading or other paper by first class mail, postage pre-paid; and

WHEREAS the NEF provides a record of parties served electronically through CM/ECF and the e-mail address to which notice was sent; and

WHEREAS it appears to be in the best interest of the bar to utilize all of the cost and time saving capabilities inherent in the automatic notice feature of the CM/ECF system to the greatest extent possible, including reliance upon the NEF for certificates of service;

IT IS HEREBY ORDERED that Vt. LBR 7005-1 is amended to read as follows:

All certificates of service filed with the Clerk shall have attached a copy of the document served, or a sufficient description thereof, include a copy of the list used for service or a specific listing with the names and addresses of the parties served, and specify the method and date of service as to each party. Unless otherwise required by the Federal Rules of Bankruptcy Procedure, service may be effected by first class mail, fax, e-mail or through CM/ECF. If service is made through CM/ECF, it is not necessary to restate the names and e-mail addresses of parties served via transmission of the NEF, if the certificate of service includes the following language:

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) generated in connection with this document and paper copies will be sent to those indicated as non-registered participants on [filer to provide date] at the following addresses [filer to complete].

When a certificate of service is appended to the document served rather than attached as a separate document, the filing party is to include reference to the certificate of service in the docket text itself.

IT IS FURTHER ORDERED that Vt. LBR 5005-4(b)(3) is hereby amended to read as follows:

- (3) **Waiver of Service and Notice by mail.** Registration with the Court as a filing user of the CM/ECF system will constitute: (1) waiver of the right to receive notice by first class or certified mail and consent to receive notice electronically; and (2) waiver of the right to service by personal service, first class or certified mail and consent to electronic service, except with regard to service of a summons and complaint under Fed. R. Bankr. P.7004. Waiver of service and notice by first class or certified mail applies to notice of the entry of an order or judgment under Fed. R. Bankr. P.9022. Pleadings and papers filed electronically are deemed served upon all CM/ECF participants who are parties to the proceeding, provided that the notice of electronic filing indicates that service has been made.

IT IS FURTHER ORDERED that Vt. LBR 9013-6(b), (c) and (d) are amended to read as follows:

(b) Service of Documents Electronically Filed:

- (1) **Notice of Electronic Filing.** Whenever a pleading or other paper is filed electronically, the CM/ECF System will automatically generate a “Notice of Electronic Filing” by electronic means at the time of docketing.
- (2) **Service on Registered Users.** If the recipient of an electronic filing is a registered user of the Court’s Electronic Filing system, the system’s automatic transmission of the Notice of Electronic Filing shall be considered equivalent to service of the pleading or other paper by first class mail, postage prepaid.
- (3) **Service on All Other Entities.** All other parties shall be served with a paper copy of the electronically filed pleading or other document in accordance with the Bankruptcy Rules and these Local Rules.

- (c) Service by E-Mail.** In addition to all registered users, any entity may register with the Clerk to accept service and notification of pleadings and documents by e-mail where the pleadings or other documents are transmitted as an attachment. Once the Clerk has been notified of the party’s consent, transmission of the e-mail with attachments to that party shall be considered equivalent to service of the pleadings or other documents by first class mail, postage prepaid, except that if served by e-mail, three (3) additional days shall not be added to a prescribed time period. Cf., Bankruptcy Rule 9006(f); see also Vt. LBR 9013-2(d)(1).

- (d) Clerk’s List of Entities Who Have Consented to Service by E-Mail.** Within each case, the Clerk maintains a list of all entities and attorneys who will accept service by e-mail and their e-mail addresses. This information is available through PACER or CM/ECF.

IT IS FURTHER ORDERED that any party who serves a document filed in this Court shall also file a certificate of service, and each certificate of service shall specify

1. the caption and date shown on the document served,
2. the name of each person or entity served,
3. the address at which each such person or entity was served, and
4. the means of service (e.g. via e-mail, fax, U.S. mail, or CM/ECF).¹

Failure to file a proper and complete certificate of service may result in denial of any relief sought. When a certificate of service is appended to the document served rather than attached as a separate document, the filing party is to include reference to the certificate of service in the docket text itself.

IT IS FURTHER ORDERED that all attorneys who are registered as users of the CM/ECF system must execute a Case Management/Electronic Case Filing (CM/ECF) Registration Form acknowledging their consent to service through CM/ECF, and enter an e-mail address into their CM/ECF User Profile prior to filing documents in this Court.

IT IS FURTHER ORDERED that the maintenance and control of the "Email Information" section of a user's CM/ECF account in the Utilities menu of CM/ECF **is the responsibility of the registered user and not the Court** and the information entered there will govern how the user will receive e-mail notification and to which e-mail address(es) the notification will be sent.

SO ORDERED.

Rutland, Vermont
January 5, 2007



Colleen A. Brown
United States Bankruptcy Judge

¹ It is not necessary to restate the names and e-mail addresses of parties served via transmission of the NEF, if the certificate of service includes the following language:

"I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) generated in connection with this document and paper copies will be sent to those indicated as non-registered participants on [filer to provide date] at the following addresses [filer to complete]."

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF
LOCAL RULES OF PRACTICE AND
PROCEDURE IN BANKRUPTCY COURT,
DISTRICT OF VERMONT**

**STANDING ORDER
07-02**

**REGARDING THE FILING OF CERTIFICATION
OF A DEBTOR'S COMPLETION OF REQUIRED
FINANCIAL MANAGEMENT COURSE ; AND
NECESSITY FOR *NUNC PRO TUNC* MOTIONS**

WHEREAS Federal Rule of Bankruptcy Procedure 1007(b)(7) [Interim] states:

An individual debtor in a chapter 7 or chapter 13 case shall file a statement regarding completion of a course in personal financial management, prepared as prescribed by the appropriate Official Form.

WHEREAS Federal Rule of Bankruptcy Procedure 1007(c) [Interim] states in pertinent part:

. . . In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 45 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1328(b). . . .

WHEREAS 11 U.S.C. § 727 states in pertinent part:

(a) The court shall grant the debtor a discharge, unless –

 (11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management

WHEREAS this Court's Standing Order # 06-08 states in pertinent part:

. . . Every individual debtor in a chapter 7 or 13 must file the Official Form 23 *Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management*. Failure to file Official Form 23 by the 45th day after the first meeting of creditors in a chapter 7 case, or the date either the last payment is due from the debtor (under the terms of the confirmed plan) or the date the debtor files a motion for entry of discharge under § 1328(b) in a chapter 13 case, may result in the case being closed without a discharge.

It appears that there may be instances where debtors will seek to file such a Certification after the time period for filing has expired, in order to obtain a discharge, and a procedure for addressing such circumstances is necessary.

THEREFORE, IT IS HEREBY ORDERED that if a debtor fails to file timely the Official Form 23 *Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management* (Form 23)ⁱ and seeks to file it thereafter, the debtor must file a motion to extend the time, *nunc pro tunc*, on notice to those parties designated under Federal Rule of Bankruptcy Procedure 1007(c) [Interim], and demonstrate cause to extend the time.

IT IS FURTHER ORDERED that a motion for discharge will not be granted unless the debtor has filed a *Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management* (Form 23) within the timeframe specified in Federal Rule of Bankruptcy Procedure 1007(c) [Interim] or has obtained an order extending the time *nunc pro tunc*.

IT IS FURTHER ORDERED that if a case is closed without entry of a discharge due to the debtor's failure to file timely a *Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management* (Form 23), the debtor may move to reopen the case to file it. The motion to reopen must (i) include a request to extend time to allow the late filing of the certification, (ii) be on notice to those parties designated under Federal Rule of Bankruptcy Procedure 1007(c) [Interim], (iii) demonstrate cause to extend the time and (iv) be accompanied by a filing fee.

SO ORDERED.

Rutland, Vermont
January 12, 2007



Colleen A. Brown
United States Bankruptcy Judge

ⁱ i.e., within 45 days after the first date set for the meeting of creditors under § 341 of the Code in a chapter 7 case, or either the date the last payment is due from the debtor (under the terms of the confirmed plan) or the date the debtor files a motion for entry of discharge under § 1328(b) in a chapter 13 case.