

VBA BANKRUPTCY LAW SECTION
Bench-Bar Brown Bag Lunch Meeting
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

Tuesday, July 17, 2012 ~ 12:00 pm – 1:00 pm
United States Bankruptcy Court, US Post Office and Courthouse – Rutland

~ Participation may be in person or by telephone ~

TOPICS FOR DISCUSSION

1. Presumed reasonable fees (see attached).
2. Discussion of Proposed Revised Local Rules.
3. Next meeting Tuesday Sept 18, 2012 from 12 noon - 1:00 PM in Rutland, will include training regarding Rutland Courtroom evidence presentation system.

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court
Have a question about them?

Call Kathy Ford at 802-776-2003 or e-mail her at kathleen_ford@vtb.uscourts.gov

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

U.S. BANKRUPTCY COURT, DISTRICT OF VERMONT

REVISIONS TO PROPOSED LOCAL BANKRUPTCY RULES JULY 12, 2012

Based upon input the bar provided to the Court at the June 13, 2012 CLE, and the subsequent proposals from the bar with respect to increasing the proposed reasonable fee for certain routine filings, the Court has revised the proposed local bankruptcy rules as follows:

Vt. LBR 1007-1(*l*) has been revised to clarify the procedure for wage withholding and automatic bank debit in Chapter 13 cases where the debtor does not have income from an employer.

Vt. LBR 2016-1(*g*) has been updated to revise the presumed reasonable fee for motions to modify confirmed plans and motions for relief from stay.

Vt. LBR 4001-1(*c*) has been revised to clarify the service required for motions for relief from stay.

In order to allow ample time for review by, and input from, the bar, the Court extends the comment period with respect to Vt. LBR 1007-1, 2016-1, and 4001-1 through **July 31, 2012**.

Vt. LBR 1007-1. LISTS, SCHEDULES, STATEMENTS, & OTHER DOCUMENTS; TIME LIMITS

(a) Schedules of Assets in All Chapters.

(1) **All Assets Must be Disclosed.** The debtor must list all assets in which the debtor has any interest, regardless of where the asset is located, the nature of the debtor's interest, or whether the debtor believes the asset to be within the definition of property of the estate. The debtor must describe all assets with sufficient specificity to allow for easy identification of the assets.

(2) **Business Inventory or Equipment.** When business inventory or equipment is scheduled, the debtor must provide an addendum to Schedule B that includes, at a minimum, a general description, a list of present items, a brief explanation of the exact location of the item(s), the name and address of the custodian, the protection being given such property, and the amount and duration of fire and theft insurance, if any.

(b) Schedules of Debts in All Chapters. All schedules of debts filed in conjunction with a petition must be complete and include the date and nature of the consideration for each debt as required by the official forms. The debtor must list all debts, including disputed debts and debts owed to creditors whom the debtor does not expect to file proofs of claim.

(c) Motion to Enlarge Time. If a debtor files a motion to enlarge the time to file schedules and seeks to file the schedules within seven days before the initial § 341 meeting of creditors, the debtor must obtain the trustee's consent. See also Vt. LBR 4002-1(d)(1).

(d) Payment Advices Cover Sheet. In addition to complying with the requirements of § 521(a)(1)(B)(iv), a debtor must also file the local payment advices cover sheet (Vt. LB Form B) certifying under penalty of perjury that:

(1) copies of all existing payment advices are attached to the payment advices cover sheet and indicating: (A) the total number of payment advices attached; (B) the period covered by those payment advices; and (C) the number of employers who issued those payment advices; or

(2) no payment advices are attached to the payment advices cover sheet because the debtor had no income from any employer within the 60-day period prior to the date of the filing of the petition; or

(3) some or all of the payment advices are not attached to the payment advices cover sheet together with an explanation as to why.

The physical signature of the debtor must be affixed to the payment advices cover sheet. If the case is a joint one, the joint debtor must also certify under penalty of perjury which of the three options outlined in the payment advices cover sheet applies. See also Vt. LBR 9011-4(c) (outlining signature requirements for non-attorneys).

(e) Certificate from Approved Nonprofit Budget and Credit Counseling Agency Regarding Pre-Petition Credit Counseling. See Vt. LBR4002-1(a), (b); see also Vt. LBR 4004-2(a)

(regarding filing certification evidencing completion of post-petition financial management education).

- (f) Official Form 21, Statement of Debtor’s Social Security Number(s).** Every individual debtor must complete and verify Official Form 21, “Statement of Debtor’s Social Security Number(s),” as required by Fed. R. Bankr. P. 1007(f). If the debtor files the bankruptcy case on paper, the debtor must submit the completed and verified Official Form 21 with the petition. If the debtor files the bankruptcy case electronically, the debtor’s attorney must retain the completed and verified Official Form 21 for at least five years in accordance with Vt. LBR 9011-1(b). If the debtor is *pro se*, the debtor must retain the completed Official Form 21 for at least five years in accordance with Vt. LBR 9011-2(b).
- (g) Definition of “Submitted.”** The term “submitted” as used in Fed. R. Bankr. P. 1007(f) and in these Rules means that the document at issue is not considered filed in the case and is not part of the case docket or the public court record.
- (h) Debtor’s Affidavit to be Filed in Chapter 11 Case.** All Chapter 11 debtors must file an affidavit setting forth:
- (1) the nature of the debtor’s business and a concise statement of the circumstances leading to the debtor’s Chapter 11 filing;
 - (2) whether the case was originally filed under Chapter 7, 12, or 13 and, if so, the name and address of any trustee appointed in the case commenced under Chapter 7, 12, or 13;
 - (3) the names and addresses of the members of any committee organized prior to the order for relief in the Chapter 11 case, any attorney for such committee, and a brief description of the circumstances surrounding the formation of any committee and the date of its formation;
 - (4) the number of classes of shares of stock, debentures, or other securities of the debtor that are publicly held, and the number of holders of those interests, listing separately those held by the debtor’s officers and directors and the amounts so held;
 - (5) a list of all property of the debtor in the possession or custody of a custodian, public officer, mortgagee, pledgee, assignee of rents, receiver, secured creditor, or the agent of any of these entities, giving the name, address, and telephone number of each and the court, if any, in which a related proceeding is pending;
 - (6) the nature and present status of each action or proceeding pending or threatened against the debtor or its property, including the court and identifying number within that court, and each opposing counsel’s name, address, and telephone number, except for cases that fit within § 524(g); and
 - (7) a list of all the real estate owned, leased, or held under other arrangements.
- (i) Additional Information Required if a Business Continues Operating.** If the Chapter 11 debtor is continuing the operation of a business, the affidavit required under paragraph (h) above must also set forth:

- (1) the estimated amount of weekly, bi-weekly, or monthly payroll and reimbursed expenses to employees, officers, partners, or other related individuals for the 30-day period following the filing of the Chapter 11 petition;
- (2) an estimated schedule of cash receipts and disbursements, in 30-day increments, covering the debtor's business operations for 90 days following the Chapter 11 filing; and
- (3) proof of all insurance.

(j) When to File Additional Business Information. In a voluntary Chapter 11 case, the debtor's affidavit referred to in paragraphs (h) and (i) above must accompany the petition. In an involuntary Chapter 11 case, the affidavit must be filed within 15 days after the entry of the order for relief, unless the Court orders otherwise.

(k) Waiver of Requirements. On application of the debtor showing that it is impracticable or impossible to furnish some or all of the foregoing information and on notice to the Office of the United States Trustee, with seven days to object, the Court may waive, or enlarge the time for complying with, any of the foregoing requirements.

(l) Chapter 13 Wage Withholding.

(1) Each Chapter 13 debtor must file with the Chapter 13 plan:

(A) a form consenting to the Court's entry of an order instituting wage withholding, [or automatic debits from a bank account where the debtor does not have income from an employer](#), and authorizing the trustee to modify or terminate the withholding [or automatic debits](#) to comport with any modification or amendment of the plan approved by the Court, without further and separate authorization or order, using a wage withholding authorization ~~(Vt./~~[consent to automatic debits from bank account form \(Vt. LB Form Y-8\)](#); or

(B) a motion for waiver of the wage withholding requirement, setting forth cause for a waiver. See Vt. LBR 3070-1(a).

(2) If a debtor has an employer, and files a motion for waiver of the wage withholding requirement seeking to make plan payments via automatic debits from a bank account, and the trustee has consented to the waiver, the proposed order must include language conditionally authorizing plan payments by automatic debit from a bank account, and include the following provision:

In the event the debtor defaults on plan payments, the debtor may be required to make plan payments thereafter through a wage withholding order.

(m) Effect of Interim Rule 1007-I. Failure to file a completed means test within 14 days after the expiration of the temporary exclusion pursuant to Interim Rule 1007-I(n)(1), or failure to timely seek an extension of time to file a means test, will result in the automatic dismissal of the bankruptcy case without further notice and with a 180-day bar to re-filing.

VT. LBR 2016-1. COMPENSATION OF PROFESSIONALS

- (a) Fee Application Guidelines.** Any entity seeking interim or final compensation for professional services rendered, or for reimbursement of actual and necessary expenses, must comply with Fed. R. Bankr. P. 2016, the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under § 330, Appendix A to 28 C.F.R. § 58 (“United States Trustee Guidelines”), and applicable case law. See also Vt. LBR 6005-1 (regarding appraisers and auctioneers).
- (b) Applications for Compensation of \$1,000 or Less.** Where a professional seeks compensation in an amount equal to or less than \$1,000, the professional must file an application for compensation on 14 days’ notice to the Office of the United States Trustee. Such applications for compensation, whether made directly by a professional or on behalf of a professional, must include the professional’s name, complete mailing and street addresses, telephone number, fax number, if any, and e-mail address. The Court will consider such applications ripe for ruling upon the earlier of: (1) the filing of a response by the Office of the United States Trustee; or (2) the expiration of the 14-day notice period. The Court may schedule a hearing on the application if it deems a hearing is necessary.
- (c) Applications for Compensation Greater than \$1,000.** Where a professional seeks compensation in an amount greater than \$1,000, the professional must follow the procedures described in Fed. R. Bankr. P. 2002(a) and may use the default procedures described in Vt. LBR 9013-4.
- (d) Certification Required.** Whenever a trustee or debtor (or, in a corporate case, the appropriate officer of the debtor) seeks approval of fees for a professional, the party must specify in the application (or in a separate certification) that the party has reviewed and supports the application for fees as filed, or, if the party opposes the application to any extent, the party must so specify. Where a professional other than one retained by a debtor or trustee (e.g., a professional retained by an official or unofficial committee) seeks compensation from the estate, the executive officer or chairperson of the retaining entity must file a statement supporting or opposing the application.
- (e) Retainers.** In a Chapter 11 or 12 case, a professional may not draw down , or take a payment from, a retainer until the professional has an order of the Court authorizing the professional to do so, notwithstanding any agreements to the contrary between a debtor and the debtor’s professionals. Such retainer funds must be segregated in a separate interest-bearing account for the benefit of the debtor to the extent this is consistent with state IOLTA regulations.
- (f) Requirement to File Fee Applications.** The Court, in its discretion, may order any debtor’s attorney to file a fee application in any case pending under the Bankruptcy Code and may direct disgorgement of all or part of the fee if the Court finds the fee to be unreasonable or paid in violation of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or these Rules. See § 329.
- (g) Presumed Reasonable Fees for Certain Motions ~~and Applications~~.** The presumed-. For certain routine motions, there is a rebuttable presumption that a fee is reasonable fee-for-a

~~motion to modify is \$350, and if it is at or below the amounts specified below. Counsel may request an award of fees without a fee application if the fee is within the “presumed reasonable fee for a motion for relief from stay is \$350 without a hearing and \$500 if the movant appears at a hearing” range.~~

(1) **Motions to Modify a Confirmed Plan and Confirmation Order.** The presumed reasonable fee for a motion to modify a confirmed plan and confirmation order is a fee up to \$700.

(2) **Motions for Relief from Stay.** The presumed reasonable fee for a motion for relief from stay to proceed against real estate is a fee up to \$700 if no hearing is necessary, and is a fee up to \$950 if the movant needs to appear at a hearing to have the motion adjudicated. The presumed reasonable fee for a motion for relief from stay against assets other than real estate is a fee up to \$500 if no hearing is necessary, and is a fee up to \$750 if the movant needs to appear at a hearing to have the motion adjudicated.

(3) **Applicability of Presumed Reasonable Fees.** Counsel may seek a fee higher than the presumed reasonable fee by filing a fee application in compliance with these Rules. The availability of a presumed reasonable fee does not entitle counsel to seek a fee that exceeds the value of the time actually spent on the motion.

(h) Real Estate Brokers. If approved in a retention order, a real estate broker may be paid the customary commission at closing, as defined in Vt. LBR 6004-1(a)(4), subject to disgorgement in the event the Court determines either the commission is unreasonable under the particular circumstances of the case or the estate is administratively insolvent.

(i) Scope of Duties to be Performed by Debtor’s Attorney for Flat Fee Charged. Except as provided in subsections (h)(4) and (i), the flat fee charged by a Chapter 7 or 13 debtor’s attorney will encompass the following services:

(1) In both Chapter 7 and 13 cases:

(A) analyzing the putative debtor’s financial situation, and advising and assisting the putative debtor in determining whether to file a petition under the Bankruptcy Code;

(B) preparing and filing the petition, and all required lists, schedules, and statements;

(C) filing the certificate received by the debtor from an approved nonprofit budget and credit counseling agency for pre-petition credit counseling;

(D) filing the debtor’s payment advices together with the “Payment Advices Cover Sheet” form (Vt. LB Form B);

(E) representing the debtor at the § 341 meeting of creditors;

(F) amending lists, schedules, statements, and/or other documents required to be filed with the petition to comport with developments that occurred before or at the § 341 meeting of creditors;

- (G) where appropriate, preparing and filing motions under § 522(f) to avoid liens on exempt property;
 - (H) where appropriate, preparing and filing motions, such as motions for abandonment or to clear title to real property owned by the debtor;
 - (I) removing garnishments or wage assignments;
 - (J) compiling and forwarding to the case trustee documents required by Vt. LBR 4002-1; and
 - (K) preparing and filing the debtor's certification of completion of instructional course concerning personal financial management (hereinafter, "Official Form 23").
- (2) In addition to the tasks identified in subparagraph (1), above, in each Chapter 7 case, where warranted by the facts of the case, the duties required of the retained attorney will include:
- (A) negotiating, preparing, and filing reaffirmation agreements; and
 - (B) preparing and filing motions under § 722 to redeem exempt personal property from liens.
- (3) In addition to the tasks identified in subparagraph (1), above, in each Chapter 13 case, where warranted by the facts of the case, the duties required of the retained attorney will include:
- (A) attending confirmation hearings and addressing all objections to confirmation;
 - (B) where a debtor seeks to modify the amount of a secured claim pursuant to § 506(a), filing a valuation motion in accordance with Fed. R. Bankr. P. 3012, and, where necessary, introducing evidence as to the value of the collateral securing the subject claim (typically at or in connection with the confirmation hearing);
 - (C) where warranted, preparing and filing a motion to strip a wholly unsecured mortgage under § 506; and
 - (D) preparing and filing a motion for entry of the discharge order.
- (4) **Applications for Fees in Excess of the Presumed Reasonable Fee.** If the debtor's attorney seeks a higher fee, both the plan and the attorney's Rule 2016(b) statement must set forth the reason the higher fee is warranted in the case, and the attorney must be prepared to file a fee application. Attorneys must maintain time records and be prepared to demonstrate the reasonableness of all fees charged to debtors regardless of whether the amount charged is below, at, or above the presumed reasonable figure.
- (5) **Additional Fees and Reduced Scope of Legal Services.** Where a debtor is represented by an attorney retained through the Vermont Volunteer Lawyers Project, on either a *pro bono* or reduced fee arrangement, the attorney may file an application to limit the scope of employment and reduce the scope of legal services to exclude certain items

enumerated in paragraph (h)(1)–(3). A debtor’s attorney seeking this relief must file the application within 21 days of the filing of the petition, must serve it on the debtor, case trustee, and the Office of the United States Trustee, and may use the default procedure.

(j) Unbundled Legal Services. In a Chapter 7 case, the Court will allow unbundled legal services with respect to a filing fee waiver application when:

- (1) the Vermont Volunteer Lawyers Project or Legal Services Law Line has referred, and an attorney has accepted, a case for *pro bono* or reduced fee legal representation;
- (2) the Court has set a hearing on the debtor’s application for waiver of the Chapter 7 filing fee in that case; and
- (3) a representative from the Vermont Volunteer Lawyers Project or Legal Services Law Line is willing to appear at the hearing to represent the debtor with respect to the filing fee waiver application.

Vt. LBR 4001-1. AUTOMATIC STAY – RELIEF FROM

(a) Motion Contents Generally. A motion for relief from stay must comply with Vt. LBR 9013-1(a)–(d) and must include the following information to the extent applicable:

- (1) the description of the property (e.g., the VIN, make, and model of a vehicle; the serial number for a mobile home or equipment; the street address, clerk’s office, and volume/page number where title to, and liens against, real property are recorded; the name and docket number of a pending court action);
- (2) the names and purported interests of all parties known, or discovered after reasonable investigation, who claim to have an interest in the property;
- (3) the amount of the outstanding indebtedness on each lien, the fair market value of the property, and the basis for the valuation;
- (4) legible and complete copies of all relevant liens and security agreements, or initial and signature pages of these documents if voluminous;
- (5) evidence of perfection of the movant’s lien or interest; and
- (6) copies of any prior orders of the Court upon which the motion relies.

(b) Additional Requirements for Motions Alleging Post-Petition Payment Default and for Objections Thereto.

- (1) **Requirement of Pre-Motion Default Notification.** If a secured creditor believes the debtor has defaulted on any post-petition payment obligation, the secured creditor must send the debtor and the debtor’s attorney, if any, a default notification setting forth with specificity the alleged post-petition default. The secured creditor must provide this notification at least 10 days before filing a motion for relief from the automatic stay.
- (2) **Motions.** Where a secured creditor moves for relief from the automatic stay based upon allegations of a post-petition payment default, in addition to complying with the requirements of Vt. LBR 4001-1(a), the secured creditor’s motion must also include the following: (A) in all cases, (i) a statement that the motion is based upon the debtor’s default, and (ii) an affidavit specifically identifying, by date and amount, the payment(s) alleged to be in default; (B) in a Chapter 7 case, a statement that the secured creditor has responded promptly and thoroughly to the case trustee or debtor’s reasonable request for account information; and (C) in a Chapter 13 case, a statement that the secured creditor has provided the debtor with the required account information and monthly statements in a timely fashion. See Vt. LBR 3071-1(e), (f).
- (3) **Objections.** A debtor objecting to the secured creditor’s motion must: (A) state with specificity those allegations of the secured creditor that the debtor disputes; (B) articulate the debtor’s legal and factual basis for asserting that the secured creditor is not entitled to relief from stay; and (C) append to the objection an affidavit of the debtor. The debtor’s affidavit must state: (i) each payment amount made; (ii) the date of each payment; (iii) the form and amount of each payment (e.g., check, money order); (iv) the means by

which each payment was transmitted (e.g., regular, first-class mail, private courier service); and (v) the address where each payment was sent. The affidavit must also include copies of records showing proof of payment(s) on the obligation or include an explanation as to why those records are not appended and when they will be filed. The debtor's failure to meet these requirements constitutes cause for the Court to deny a request by the debtor for additional time to produce records and may result in the Court treating the motion as unopposed.

- (4) **Secured Creditor's Additional Obligations When a Chapter 13 Debtor Objects; Consequence of Failure to Meet Additional Obligations.** When a Chapter 13 debtor contests either the payment default or the secured creditor's application of the payment(s), and complies with the procedure delineated in subparagraph (3) above, the secured creditor must immediately transmit the debtor's payment history and a detailed accounting of how the secured creditor applied the debtor's payment(s) to the outstanding obligation, to debtor's counsel (or to the debtor directly, if not represented by counsel) in a manner ensuring the debtor has a reasonable opportunity to review this information before the hearing on the motion for relief from stay. In the event the secured creditor has not provided debtor's counsel (or the debtor, if not represented by counsel) with the required account information in a timely and complete fashion, the Court may deny the motion for relief from stay, deny the secured creditor's request for recovery of attorneys' fees and/or costs in connection with the motion, or grant such other relief it deems appropriate. The Court may also order the secured creditor to pay the debtor's reasonable attorney's fees, if any, for responding to the motion.

(c) **Service of Motion.** ~~All motions~~ A movant seeking relief from stay must file the motion with the Clerk. ~~The movant must also file, along with~~ a certificate of service showing service of the motion on the debtor, the debtor's attorney, the case trustee (if any), ~~all~~ any parties ~~who hold~~ affected by the motion or having an interest in the property that is the subject of the ~~relief from stay~~ motion, ~~other~~ all parties in interest ~~entitled to~~ who have requested notice, and the Office of the United States Trustee. See also Vt. LBR 9013-6(a), (c).

(d) **Stipulation for Relief from Stay.** A stipulation for relief from stay must describe the property or interest involved, state the property's fair market value, state the basis for valuation, and list any encumbrances against the property (by lien holder and amount). A stipulation for relief from stay must also include the statements, but need not include the supporting documents, required by paragraph (a), above. No affidavit is required if there are no facts in dispute. Notice required under Vt. LBR 9013-2(c) is waived for a stipulated motion for relief from stay when: (1) all parties entitled to notice have been served with the motion; and (2) all parties in interest have provided their consent. See Vt. LBR 9011-4(f), (g). Additionally, no notice of a stipulation is required to be served if the motion for relief from stay was previously noticed for hearing and no party objected or the Court overruled any objection filed.

(e) **Final Hearing.** The Court will hold a hearing on the motion for relief from stay within 30 days after its filing, except in those instances where paragraph (d), above, is used or the motion is filed under the Court's default procedure. See Vt. LBR 9013-4. If a movant schedules a hearing on a motion for relief from stay for a date that is more than 30 days after the date the movant filed the motion, the movant must include an affirmative waiver of the

termination of the stay after 30 days, see § 362(e), and the stay will continue pending the conclusion of a final hearing and determination by the Court under § 362(d). Likewise, when the parties agree to postpone the hearing, an equal extension of time will be deemed added to the 30-day period set forth in § 362(e).

(f) Evidentiary Hearing. The final hearing on a motion for relief from stay will be an evidentiary hearing unless otherwise agreed by the parties. Each party planning to present evidence must contact the courtroom deputy to ensure there is sufficient time for the presentation of evidence and must file and serve a Rule 9014(e) notice of evidentiary hearing at least seven days prior to the hearing, unless a shorter time is approved by the Court. See Vt. LBR 9014-1(f); see also Vt. LB Form V.

(g) Order Granting Relief from Stay.

(1) Required Language in Orders Authorizing Sale of Collateral. If the order granting relief from stay authorizes sale of collateral, the order must specifically direct the secured creditor to deliver any surplus money to the case trustee promptly after the consummation of the sale and, if there is surplus money, serve the case trustee with an accounting of the sale promptly after its consummation. The order must also clearly identify the collateral that is the subject of the order granting relief from stay. Cf., e.g., paragraph (a)(1).

(2) Separate Order Required. Whenever relief from stay is granted, the movant must file a separate proposed order granting that relief. Relief from stay (whether absolute or conditional) is not available through an ordering paragraph in a plan confirmation order or any other order that grants other relief.

(h) Conditional Relief from Stay. If an order granting conditional relief from stay, or a stipulation of the parties for conditional relief from stay, is silent on the issue of how much time a debtor has to rebut an affidavit of default filed in furtherance of the order, then the debtor will have seven days to rebut an affidavit of default. If the order (or stipulation) provides for a different time period, then the order (or stipulation) will control.