

**VBA BANKRUPTCY LAW SECTION**  
**BENCH-BAR BROWN BAG LUNCH MEETING**  
*with Hon. Heather Z. Cooper, Chief U.S. Bankruptcy Judge*

**Held at the 22<sup>nd</sup> Annual VBA Bankruptcy Section Holiday CLE**  
**December 2, 2022 ~ 11:15 am – 12:30 pm**

**AGENDA**

**1. CHANGES IN FEDERAL RULES OF BANKRUPTCY PROCEDURE**

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- Three Amendments Effective 12/1/2022
- All deal with the debtor's notice to creditors or the United States trustee
- Simplifies consumer practice
- NEW Fed.R.Bankr. P. 7004(i) Eliminates the Requirement to Name an Officer

(i) SERVICE OF PROCESS BY TITLE. This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3) or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address—or even be named—if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title.

New Rule 7004(i) makes clear that attorneys no longer need to locate and name an individual officer of the institution to comply with Rules 7004(h) and 7004(b)(3). As stated in the Advisory Committee Note issued with the amendment, it is now sufficient to simply use the title of an officer, such as “‘Chief Executive Officer,’ ‘President,’ ‘Officer for Receiving Service of Process,’ ‘Managing Agent,’ ‘General Agent,’ ‘Officer,’ or ‘Agent’ (or other similar titles).” Of course, the envelope containing the document to be served must still be sent to the defendant's proper address.

- Fed.R.Bankr.P. 3002(c) Clarifies effect of Debtor's Notice of Grant of Extension for Creditor to File Proof of Claim. The phrase “because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)” was deleted from the rule. A separate subdivision that applied to creditors who receive notice mailed to a foreign address, Rule 3002(c)(6)(B), was also deleted so that the same standard would apply to extensions requested by all creditors. Thus, Rule 3002(c)(6) now provides:

(6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

The Advisory Committee Note issued with the amendment states that “Rule 3002(c)(6) is amended to provide a single standard for granting motions for an extension of time to file a proof of claim, whether the creditor has a domestic address or a foreign address. If the notice to such creditor was ‘insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim,’ the court may grant an extension.”

- Fed.R.Bankr.P. 5005 Now Permits Simplified Electronic Service on the United States Trustee. As amended, Rule 5005(b)(1) permits parties to transmit documents to the United States trustee by electronic means under Rule 9036, rather than by mailing or delivering them to an office of the United States trustee in the district. Although most, if not all, United States trustee offices are ECF filers, the Advisory Committee Note issued with the amendment states that transmittal by electronic means is permitted “regardless of whether the United States trustee is a registered user with the court’s electronic-filing system.”

Rule 5005(b)(2) had required that parties who transmitted documents to the United States trustee were required to file as proof of the transmittal a verified statement. This provision is also amended to provide that parties who transmit documents to the United States trustee using the court's ECF system do not need to file a statement evidencing the transmittal. For other filers who do not use court’s ECF system, Rule 5005(b)(2) is amended to eliminate the requirement that the statement be verified.

Effective Dec. 1, Rule 5005(b) provides:

(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE. (1) The complaints, notices, motions, applications, objections and other papers required to be transmitted to the United States trustee may be sent by filing with the court’s electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise.

(2) The entity, other than the clerk, transmitting a paper to the United States trustee other than through the court’s electronic-filing system shall promptly file as proof of such transmittal a statement identifying the paper and stating the manner by which and the date on which it was transmitted to the United States trustee.

### **EXCEPTIONS:**

- **Vt. LBR 1009-1(e):** provides the procedure for correcting a Social Security number. This is inherently a paper process because Official Form 21 does not get published on the case docket. In addition, when a correction is made, the paper document (with full, corrected social security number) necessarily needs to be served by the debtor on all creditors, the case trustee, and the UST.
- **Monthly operating reports in small business cases.** These cases have different MOR requirements and retention requirements than non-small business cases such that small business debtors need to send signed original MORS to the U.S. Trustee for retention.

## **2. CHANGE IN 341 MEETINGS AND CHAPTER 13 HEARING DATES**

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- As we talked about at the September Bench Bar, Chapter 12 and 13 meetings of creditors will no longer be scheduled on the same day going forward.
- Note that Chapter 13 Confirmation hearings will begin at 10:00 a.m. on Chapter 13 dates.
- Chapter 12 hearings will be scheduled during the afternoon.
- §§1324 and 1224 set forth the timetables for confirmation hearings:
  - §1324: Not earlier than 20 days and not later than 45 days after the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an **earlier** date and there is no objection to such earlier date. [emphasis added]
  - §1224: Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

### 3. LOCAL RULES UPDATE

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- Look for upcoming Standing Orders.
- Vt. LBR 3015-2 which addresses the Timing and Location of Confirmation Hearings in Chapter 13 will be deleted in its entirety. This is the local rule that sets forth the Court's finding that it is in the best interests of all parties to hold chapter 13 meetings of creditors on the same day, and at the same location as chapter 13 confirmation hearings based upon the geography of Vermont and the travel distances between some towns and the federal courthouses.
- VT. LBR 5070-1 which states that hearings should be scheduled at the location where the meeting of creditors is scheduled (Rutland or Burlington) will be amended to reflect that hearings should be scheduled (Rutland or Burlington) based upon the geographical location of the Debtor.
- Will be evaluating the 10:00 a.m. filing deadline on the business day before confirmation hearings since confirmation hearings will now begin earlier in the day.

### 4. NOTICE

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- Amending Plans and when notice needs to be provided.
- Fed.R.Bankr.P. 2002: 21 days' notice for the time fixed for filing objections to confirmation of a Chapter 13 Plan and time fixed for filing objections and the hearing to consider confirmation of a Chapter 12 plan. Many courts have held that the timetable under Fed.R.Bankr.P. 2022 resets when the Plan is amended pre-confirmation.
- As you know, we have modified that by Vt. LBR 3015-1: The debtor may file an amended plan, along with all necessary amended schedules supporting it, no later than seven days prior to the confirmation hearing date. The debtor must serve the amended plan on all parties whose treatment is diminished from the treatment set forth in the original plan.
- Diminished is not merely a reduction in payment. As you know, under §1325, the Debtor must commit all their disposable income within the applicable commitment period. "Diminished" may include a shortened plan period.

### 5. CHANGE IN VTB WEBSITE

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- Updated Website – How to Schedule a Hearing

### 6. UPDATE FROM THE CLERK'S OFFICE

THERESA DAVIDSON

- New Forms Effective 12/1/2022

### 7. STUDENT LOAN UPDATE

J. COHEN

### 8. OTHER BUSINESS

- Co-Chairs
- United States Trustee's Office
- US Attorney's Office
- Chapter 13 Trustee

Bench-Bar lunch meetings are coordinated by the Bankruptcy Court.

One hour of Vermont CLE credit is provided for attendance at each meeting.

Contact Lisa Clifford at (802) 657-6432 or [Lisa\\_Clifford@vtb.uscourts.gov](mailto:Lisa_Clifford@vtb.uscourts.gov) with any questions.