

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

United States Bankruptcy Court, Rutland
Friday, September 29, 2017 ~ 12:00 - 1:00 PM

Dial-in number: (888) 398-2342. Access code: 846 68 72#
If you dial into the meeting, please use your “mute” function, unless speaking.

AGENDA

1. **LOCAL RULES PREVIEW** Judge Brown & Tavian Mayer
Public Comment Period re LR's will begin in early Oct
Updated Summary of Changes attached
Link to the local rules for VTB Bk Bar's preview: <http://www.vtb.uscourts.gov/bankruptcy-bar-preview>

- *Bk Bar may weigh in today, in advance of public comment period*
- *Of particular interest:*
 - *Embedded motions in ch 13 plans:*
 - *this relief only available through the plan or an amended plan*
 - *LR 3012-1(b)(2) valuation of collateral, allowance of sec'd cl & int rate*

2. **2017 HOLIDAY CLE: DEC 1, 2017** Heather Cooper
Update re location, agenda and speakers.

3. **UPCOMING CLE SPONSORED BY FEDERAL COURT ADVISORY COMMITTEE** Judge Brown
Oral Advocacy CLE; will include a bk'cy, civil & criminal motion – FULL
Nov 27, 2017 – Burlington 5th Floor Courtroom Federal Building (flyer attached)

4. **2018 HEARING CALENDAR POSTED ON WEBSITE** Jody Kennedy & Theresa Davidson
We will continue to hold two regular (Wednesday) hearing days per month in Burlington, and two regular (Friday) hearing days per month in Rutland

5. **A 5-MINUTE TAX TIP FOR BANKRUPTCY PRACTICE** Melissa Ranaldo

6. **CLERK'S OFFICE UPDATE:** Jody Kennedy & Theresa Davidson
Refreshed Panel of Mtge Mod / Loss Mitigation Mediators:
Heather Cooper, Richard Lang, Tavian Mayer, Rebecca Rice
New Federal Bankruptcy Rules under consideration; comment period ends February 28, 2018
Bankruptcy Rules 2002, 4001, 6007, 9036, 9037

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court. They are free and no pre-registration is required.
Have a question about them? Contact Maria Dionne @ 802-657-6432 or maria_dionne@vtb.uscourts.gov.

Attachments: Updated Summary of Changes
Flyer for Oral Advocacy CLE
Brief description of proposed amendments to Bankruptcy Rules

Summary of 2017 Revisions to Vermont's Local Bankruptcy Rules¹

I. OVERALL / GLOBAL CHANGES

- Models the Federal Bankruptcy Code and Rules for grammar, style, and capitalization
- Replaces passive voice with active voice whenever practicable
- Inserts gender neutral language
- Increases clarity and consistency of citations to the local and federal statutes, rules, etc.
- Clarifies certain references used consistently throughout the Local Rules (e.g., CM/ECF, master mailing list, first-class mail, first meeting of creditors)
- Updates references and cross references to Bankruptcy Code & Rules and Local Rules, as needed
- Updates references to local and federal forms, as needed
- Changes references to parts of the Local Rules to be paragraphs and sub-paragraphs rather than to sections and sub-sections
- Clarifies the distinction between filing (which makes something part of the record) and submitting (which does not)
- Makes the most comprehensive substantive changes to LR 3015 (re the chapter 13 plan, use of the mandatory model plan, and the CMP process) and LR 4007 (re the mortgage mediation process)
- Requires chapter 13 debtors to seek certain types of relief (e.g., lien stripping, valuing collateral, and lien avoidance) through “embedded motions” set out in a plan or amended plan

II. REVISIONS TO PARTICULAR RULES

PART I – Commencement of Case, Proceedings Relating to Petition and Order for Relief

1002-1. PETITION – GENERALLY

- Deletes subparagraph (b), “Original Petition and Schedules to be Brought to §341 meeting”
- Clarifies differences between email and CM/ECF filings as well as non-electronic filings
- Clarifies subparagraph (d) “Corporate Resolution/LLC Authority”

1006-1. FEES – RESTRICTIONS ON DEBTORS; INSTALLMENT PAYMENTS; WAIVER OF FILING FEE

- Specifies the methods available to debtors for paying the petition filing fee

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

- Specifies the information a debtor must provide when disclosing assets
- Clarifies the purpose of Form 121 and why it must be submitted rather than filed
- Clarifies that a trustee needs no further authorization/order to modify wage withholding/ACH to comport with an approved plan amendment

1007-2. DISMISSAL FOR FAILURE TO FILE REQUISITE DOCUMENTS - **DELETED**

1007-3. MAILING LIST

- Consistently uses the term “master mailing list” as a global reference to what was often formerly known as the “mailing matrix” and deleted all references to mailing matrix

1007-4. OTHER DOCUMENTS REQUIRED - **DELETED**

¹ This summary only addresses rules that had significant substantive changes; it does not include changes that were substantively *de minimus* or only of a grammatical or stylistic nature. [It was last updated on September 25, 2017.](#)

1009-1. AMENDMENTS TO LISTS AND SCHEDULES

- Deletes references to the procedures explained following the 2015 revisions

1072-1. LOCATION OF COURT HEARINGS AND WHERE TO FILE DOCUMENTS

- Updates the e-mail and physical addresses to which non-electric filings must be delivered

1074-1. CORPORATIONS - **DELETED**

**PART II – Officers and Administration; Notices; Meetings;
Examinations; Elections, Attorneys and Accountants**

2002-1. NOTICE TO CREDITORS AND PARTIES IN INTEREST

- Adds chapter 12 to the types of cases in which the Clerk must give notice of the time fixed for objecting to a plan and the debtor's attorney must give notice of the time to object to an amended or modified plan
- Explains that a chapter 13 debtor seeking determination of an allowed amount of secured claim must now do so in the plan (on new, mandatory Official Form 113)

2002-2. NOTICE TO UNITED STATES OR A FEDERAL AGENCY - **DELETED**

2003-2. CREDITORS' COMMITTEE DUTY TO PROVIDE INFORMATION IN CHAPTER 11

- Removes the list of duties of a creditor's committee; formerly (a)-(d)

2014-1. EMPLOYMENT OF PROFESSIONALS

- Specifies types of "professionals" who can be retained in a bankruptcy case

2015-2. DEBTOR-IN-POSSESSION – CHAPTER 13 BUSINESS DEBTORS' OPERATING ORDERS

- Simplifies the explanation of a debtor in possession's duty to file operating reports
- Sets forth the trustee and/or interested parties' duty to file a proposed order (and the contents thereof) if seeking an order directing a debtor to file operating reports

PART III – Claims and Distribution to Creditors and Equity Interest Holders; Plans

3007-1. CLAIMS – OBJECTIONS

- Clarifies that each claim objection must include the proof of claim to which it objects
- Deletes explanation of distinction between chapter 12 and 13 objections

3008-1. CLAIMS – RECONSIDERATION - **DELETED**

3012-1. VALUATION OF COLLATERAL, ALLOWANCE OF SECURED CLAIMS, AND ESTABLISHMENT OF INTEREST RATE ON CHAPTER 12 AND 13 CASES

- Makes clear that a creditor's proof of claim controls for purposes of establishing secured claims and interest required to be paid on that claim, with two exceptions
- Explains the process and requirements for having a secured claim allowed in a different amount or with a different interest rate—individually describing the process and requirements in a chapter 13 plan, chapter 13 motion, and chapter 12 motion

3013-1. MOTION TO STRIP LIEN OR MORTGAGE THAT IS WHOLLY UNSECURED IN CHAPTER 12 AND 13

- Expands scope of rule to include chapter 12 cases

- Requires chapter 13 debtors who seek to strip a wholly unsecured lien or mortgage under §506 to do so in the plan or an amended plan (Official Form 113)
- Specifies the additional documents and info a debtor must attach to the plan, to obtain this relief
- Requires a debtor to file a separate proposed order to avoid a lien, strip a lien/mortgage, or value collateral (embedded motions), notwithstanding granting of this relief in the confirmation order

RULE 3015 – OVERALL CHANGES

- New numbering and headings:
 - 3015-1: Plan Requirements in Chapter 13
 - 3015-2: Timing and Location of Confirmation Hearings in Chapter 13
 - 3015-3: Objections to Confirmation in Chapter 13
 - 3015-4: Additional Separate Orders Required for Embedded Motions in Chapter 13
 - 3015-5: Confirmation Orders in Chapter 13
 - 3015-6: Conduit Mortgage Payment Plans in Chapter 13
 - 3015-7: Confirmation Hearings in Chapters 12 and 13
 - 3015-8: Motions to Modify Confirmed Chapter 12 and 13 Plans
- Deletes previous Vt. LBR 3015-2(j)(7)&(8) – “Post-Petition Changes and Additional Charges” and “Motions Relating to Claims Secured by a Security Interest in the debtor’s Principal Residence, Upon Completion of Chapter 13 Payments.”

3015-1. PLAN REQUIREMENTS IN CHAPTER 13

- Makes clear all chapter 13 plans must now be filed on Official Form 113; deletes all explanatory detail re format and content of plan
- If embedded motions are not included in the original plan and the debtor later determines such a motion(s) is necessary, debtor must file an amended plan with the motion(s) included.
- Defines “embedded motions” and instructs debtor to fill out applicable parts of plan
- Makes minimum monthly plan payment and sale plans two separate sections; retains sale plan info
- Sections discussing payment of secured claims, bifurcation of claims, and payment of short-term secured debts deleted (previously Vt. LBR 3015-1(f)-(h))
- Mandatory fee disclosure (previously Vt. LBR 3015-1(a)) now moved down to 3015-1(f) and shortened with a cite to Vt. LBR 2016-2
- Adds new section regarding service of plans (Vt. LBR 3015-1(g))

3015-3. OBJECTIONS TO CONFIRMATION IN CHAPTER 13

- Adds provision for timely objection to amended plans

3015-4. ADDITIONAL SEPARATE ORDERS REQUIRED FOR EMBEDDED MOTIONS IN CHAPTER 13

- Describes new procedure requiring separate proposed order for embedded motions

3015-5. CONFIRMATION ORDERS IN CHAPTER 13

- Previously Vt. LBR 3015-2(h); deletes reference to what trustee must do (since he files proposed confirmation order) and describes what confirmation order (what court issues) includes

3015-6. CONDUIT MORTGAGE PAYMENT (CMP) PLANS IN CHAPTER 13 [*Previously Vt. LBR 3015-2(j)*]

- Post-petition mortgage payments section [*previously Vt. LBR 3015-2(j)(3)*] dramatically simplified into 2 short paragraphs: when debtor is not delinquent and when the debtor is delinquent
- Duties of debtor [*previously Vt. LBR 3015-2(j)(4)*, now Vt. LBR 3015-6(c)]:

- Now specifies only 4 duties: (1) file ww authorization form, (2) promptly modify amount of plan payments when there is a change in amount, (3) promptly object to creditor's POC when there is cause, and (4) immediately file and serve on trustee copy of TPP
- Deletes 4 duties previously listed: (i) to specify CMP terms in plan, (ii) to provide trustee and creditor with Y forms, (iii) to make timely first payment, (iv) to make sufficient plan payments, and also deletes the penalty for a debtor's failure to comply with requirements
- Duties of trustee and creditor likewise shortened and simplified
- Deleted creditor's duty to file POC as soon as practicable [*previously Vt. LBR 3015-2(j)(6)(A)*], duty to disgorge [*previously 3015-2(j)(6)(B)*], and duty to attach information to MFRFS [*previously Vt. LBR 3015-2(j)(6)(G)*].

3015-7. CONFIRMATION HEARINGS IN CHAPTERS 12 AND 13 [*Previously Vt. LBR 3015-2(e)-(g)*]

- Now applies to chapter 12 as well (previously, no rule for ch 12 confirmation hearings)

3015-8. MOTIONS TO MODIFY CONFIRMED CHAPTER 12 AND 13 PLANS [*Previously Vt. LBR 3015-4*]

- Add two requirements for a motion to modify:
 - explanation re why plan needs to be modified and how it meets requirements of Bk Code
- Requires use of local proposed order form and filing of modified ch 13 plans on Official Form 113
- Generally, applies to chapter 12 as well (previously, no rule for ch 12 MTM)

3016-1. CHAPTER 11 SMALL BUSINESS CASES PLAN - **DELETED**

3070-1. PLAN PAYMENTS IN CHAPTER 13

- Adds requirement that debtor specify form of automatic payment (ACH or WW) in the plan
- Deletes (c) "Chapter 13 Trustee's Percentage Fee upon Dismissal or Conversion"

3071-1. SECURED CREDITORS' OBLIGATION TO PROVIDE ACCOUNT INFORMATION AND STATEMENTS TO DEBTORS POST-PETITION

- Mortgage creditors monthly statements no longer optional- must to be sent monthly to all chapter 12 and 13 debtors; deletes (j) "Optional Monthly Statements from Non-Mortgage Creditors"

PART IV– The Debtor: Duties and Benefits

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

- Allows chapter 13 debtor to file motion for relief from stay as embedded motion in plan
- Reduces from 10 to 7 days the time a secured creditor must refrain from filing a relief of stay motion following a default
- Allows a printout of payments made on the trustee's website to replace a secured creditor's affidavit of payments alleged to be in default

4001-5. OBTAINING CREDIT

- Increases the borrowing limit for a motor vehicle from \$15,000 to \$18,000
- Increases borrowing limit for extraordinary health/general welfare expense from \$5,000 to \$7,000

4001-7. MORTGAGE MEDIATION PROGRAM

- Makes clear mortgage mediation is available up through the date of the debtor's discharge and adds requirement that mediation is available if it would be available in state court
- Explains required contents for motion for mediation and any objections, and requires further specifications when the U.S. is mortgage holder

- Combines into one list all situations in which mediation will be denied (unless creditor consents)
- Provides general rule conferring broad discretion to mediators in mediation process
- Shortens section discussing time frame for mediation process significantly; all references to any internal court timelines (e.g., when Clerk would enter a mediation order or send list of mediators to parties) deleted; requires mediator to file interim or final report based upon results of mediation; new language now included in draft proposed order for mortgage mediation
- Adds provision requiring moving party to send mediator copy of motion for mediation, all docs in support of that motion, and the promissory note and mortgage that are the subject of the mediation
- Deletes list of specific documents that were required; rule now requires debtor to produce all documents the creditor reasonably requests and provide copies to mediator
- Deletes list of scenarios that constitute cause to change amount or allocation of mediation fee
- Deletes language already included in proposed order for motion to declare mediation closed
- Simplifies the directions for service

4002-1. DEBTOR’S DUTIES – GENERALLY

- Simplifies debtor’s duties re the certificate from nonprofit budget and credit counseling agency
- Clarifies the duty to file, content, and format of chapter 11 monthly operating reports

4002-3. DEBTOR’S DUTIES – CONSEQUENCE OF FAILURE TO FILE REQUISITE DOCUMENTS - **DELETED**

4003-2. AVOIDING JUDICIAL LIENS THAT IMPAIR AN EXEMPTION

- Deletes reference to chapter 13 because chapter 13 motions now embedded in national plan form

4004-2. DISCHARGES

- Explains requirement to file Form 423 in every individual chapter 7, 11, and 13 case, unless the financial management course directly filed certificate of completion
- Deletes (a)(3), “Motion to Reopen Case to Enlarge Time for Filing of Official Form 423 and Enter Discharge”
- Deletes (a)(4), “Waiver of Requirement to File Official Form 423”
- Deletes (f), “Sua Sponte Denial of Discharge”

PART V– Courts and Clerk

5001-3. CLERK – PUBLIC ACCESS TO RECORDS

- Deletes (b), “Request for Limiting Access to Sensitive Information”

5003-4. REQUIREMENTS FOR FILING AND SEALING DOCUMENTS

- Adds provision that the movant must serve the US trustee and removes reference to Local Appendix V

5005-1. FILING DOCUMENTS – FORMAT REQUIREMENTS

- Requires electronically filed documents to be in PDF format and searchable whenever possible

5073-1. Devices Prohibited in Courthouse and Broadcasting by the Court

- Changes title to reflect ‘devices’ to include all things one can use in today’s day to record and/or photograph while in court

5081-1. FEES – FORM OF PAYMENT

- Includes pay.gov as an acceptable form of payment and deletes specific listing of credit cards

PART VI – Collection and Liquidation of the Estate

6003-1. FIRST DAY MOTIONS

- Requires debtor to label first day motions as emergency motions and contact courtroom deputy to set hearing date if seeking to have hearings held on shortened notice

PART IX – General Provisions

9001-1. DEFINITIONS - **DELETED**

9003-1. *EX PARTE* CONTACT

- Adds estate accountants, debtors, creditors, trustees to the list of those barred from ex parte communications with the Bankruptcy Court

9011-1. ATTORNEYS – DUTIES AND RETENTION OF DOCUMENTS

- Deletes req'ment that Clerk will retain petitions, statements, and schedules filed non-electronically
- Moves provisions re unauthorized use of passwords and electronic signatures to 9011-4

9013-5. MEMORANDA OF LAW

- Deletes (b), “Motions Not Requiring Memoranda of Law”

9013-6. SERVICE AND FILING OF CERTIFICATES OF SERVICE.

- Clarifies that a movant must file a notice of motion either before or with the motion and file a certificate of service affirming service of both
- Explains that a movant may attach the certificate of service to the motion or file it separately, and directs that if the certificate of service is filed separately, the movant must either link the certificate of service to the document, or identify the document served and attach a copy

9015-1. JURY TRIALS - **DELETED**

9016-1. SUBPOENAS AND RULE 9014(e) NOTICES OF EVIDENTIARY HEARINGS – **DELETED**

9072-1. ORDERS – PROPOSED.

- Deletes (d), “Settled Orders”

9076-1. STATUS CONFERENCES AND CASE MANAGEMENT CONFERENCES

- Makes clear that the Court may hold a status or case management conference at any time



ORAL ADVOCACY OF MOTIONS

Monday, November 27, 2017

1-4:30 p.m.

Check-in will begin at 12:30 p.m.

Participating Judges will include:

U.S. District Chief Judge Christina Reiss; U.S. District Judge Geoffrey W. Crawford; U.S. District Judge William K. Sessions III; U.S. Bankruptcy Judge Colleen Brown; U.S. Magistrate Judge John M. Conroy; Vermont Supreme Court Justice Karen R. Carroll; Vermont Superior Court Judge Mary Miles Teachout; and Vermont Superior Court Judge Nancy J. Waples

Three motions that were actually filed, argued, and decided in federal court (civil, criminal, and bankruptcy) will be argued before a panel of judges. After presenting argument, the oral advocates will explain their strategy to participants and the judicial panel will evaluate the oral advocacy, each in an interactive forum. The program will provide guidance regarding how to present complex arguments in a limited time frame, offer suggestions regarding how to organize oral argument for maximum effectiveness, and identify common pitfalls to avoid.

United States District Court
for the
District of Vermont
5th Floor Courtroom
11 Elmwood Avenue
Burlington, Vermont

This seminar is FREE and space is limited

Registration is required by November 17th

To register send e-mail to: registration@vtd.uscourts.gov

Subject line: Oral Advocacy

3.5 general CLE credits will be awarded for attendance.

Proposed Amendments to Federal Rules of Bankruptcy Procedure

1. Amendments to Bk Rules 2002 and 9036 would allow for notices and service to be made electronically.
2. Official Form 410 would include language allowing filers to receive updates via email.
3. Bk Rule 4001 would have new language clarifying that Rule 4001(c), related to obtaining credit, would not apply to Chapter 13 cases.
4. Bk Rule 6007 would add language that specifies which parties must be served with an abandonment motion, and
5. Bk Rule 9037 would include new language that prescribes a procedure for the belated redaction of documents.

Comment period ends Feb 28, 2018