

**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 # 15-06

**TO REVISE LOCAL RULES 1002-1(C) & (D),
2002-1(F), 5001-2(B), 5003-1(A), 5005-1(C),
5005-2(C), 5005-4, 9011-2(B), 9011-4(E)-(G),
9013-2(G), and 9075-1(B) TO PROHIBIT
THE FILING OF BANKRUPTCY DOCUMENTS
VIA FACSIMILE (FAX) AND TO REQUIRE
SERVICE ON THE UNITED STATES TRUSTEE
BY EMAIL RATHER THAN BY FAX**

This Court receives a relatively small number of fax filings each month and will begin operating with different telephone and computer systems on January 1, 2016, which makes it more complicated to accept fax filings. Therefore, the Court has determined it will no longer accept bankruptcy filings or payment information via fax. The preferred method for filing documents in this Court is through CM/ECF, and going forward the Court will also accept filings of court documents via email.

Additionally, to be consistent with this change in Court procedure, the U.S. Trustee for Region 2 has requested the Local Rules also reflect his preference that parties serve his office by email rather than by fax.

As a result of these two new procedures, THE COURT FINDS that eleven Local Rules need revision.

Accordingly, IT IS HEREBY ORDERED that Vt. LBR 1002-1(c) and (d) are revised to read:

VT. LBR 1002-1. PETITION – GENERALLY

(a) Electronic Filings of Petition. A petition commencing a case under the Bankruptcy Code may be filed by electronic means through the Case Management/Electronic Case Filing System (hereinafter, “CM/ECF System” or “CM/ECF”), in accordance with the requirements set forth in these Rules. When a case is commenced electronically, the debtor is not required to file the original petition, schedules, and statements with the Clerk of the Court (hereinafter, “Clerk”).

(b) Original Petition and Schedules to be Brought to § 341 Meeting. The debtor

or the debtor's attorney must bring the original, signed petition, schedules, and statements to the meeting of creditors held pursuant to § 341. At the meeting, the trustee will verify the debtor's signature and the accuracy of the petition, schedules, and statements. See also Vt. LBR 4002-1(d) (providing list of documents a debtor is required to present to the case trustee at the § 341 meeting of creditors).

~~(e) **Fax Filings.** The Clerk's Office will accept facsimile (hereinafter, "fax") filings transmitted directly to its fax machine to commence a case if accompanied by appropriate credit card authorization. See Vt. LBR 5081-1(e). The credit card authorization must be specified on a separate page of the fax transmission. The case is deemed commenced at the date and time entered into the CM/ECF System by the Clerk's Office, not the time of transmission of the fax. See also Vt. LBR 5005-4(a) (providing further instructions on fax filings). The filing party is bound by the document as faxed.~~

~~(d)~~**(c) E-Mail Filings.** The Clerk's Office will accept ~~e-mail filings only in those circumstances where filing via CM/ECF or fax is not possible or practical; the e-mail transmitting the filing must include an explanation of those alleged circumstances.~~ Documents submitted via e-mail for filing provided they are to be in portable document format (PDF) and are accompanied by appropriate credit card authorization only. See Vt. LBR 5005-1 (providing detailed instructions on proper formatting of documents). Such documents are to be e-mailed to: efiling@vtb.uscourts.gov. A document submitted for filing via e-mail is deemed filed as of the date and time it is entered into the CM/ECF System by the Clerk's Office, not the time ~~the email was transmitted~~~~of transmission of the e-mail~~. The filing party is bound by the document as e-mailed. See also Vt. LBR 9011-4(d) (providing further instructions on required e-mail signatures).

IT IS FURTHER ORDERED that Vt. LBR 2002-1(f) is revised to read:

VT. LBR 2002-1. NOTICE TO CREDITORS AND PARTIES IN INTEREST

(e) Service on the Office of the United States Trustee by Parties Not Registered for CM/ECF. Parties who are not yet registered users of the CM/ECF System must serve the Office of the United States Trustee with all notices of motion, together in the same envelope with the motion, supporting affidavits, exhibits, and a copy of the certificate of service. Unless the Court orders otherwise, all *ex parte* applications, accompanied by the required affidavits and exhibits, must be served upon the Office of the United States Trustee contemporaneously with the filing of the documents with the Clerk's Office. See Vt. LBR 4002-1(f) (regarding monthly operating reports).

(f) Forms of Service. Where service is not via the CM/ECF System and a motion consists of several documents, the movant must serve all parties entitled to service of the motion papers with the motion, exhibits, and notice of hearing in a single email; ~~fax transmission~~, or envelope.

IT IS FURTHER ORDERED that Vt. LBR 5001-2(b) is revised to read:

VT. LBR 5001-2. CLERK – OFFICE HOURS; LOCATION; WEBSITE

(b) Mailing Address, E-Mail Address, and Telephone Number, ~~and Fax Number.~~

The mailing address for the Clerk's Office is P.O. Box 1663, Burlington, VT 05402-1663. The physical location of the Clerk's Office is 11 Elmwood Avenue, Room 240, Burlington, VT 05401. The general e-mail address for the Clerk's Office is webmaster@vtb.uscourts.gov. The telephone number for the Clerk's Office is (802) 776-2000, ~~and the fax number is (802) 776-2020.~~

IT IS FURTHER ORDERED that Vt. LBR 5003-1(a) is revised to read:

VT. LBR 5003-1. CLERK – DUTY TO MAINTAIN RECORDS

- (a) General Duty to Maintain All Records.** The Clerk will maintain all official records of the Court. The official Court records for documents filed after April 1, 2002 are electronic records. If the Clerk receives any documents on paper or by e-mail, ~~or fax,~~ the Clerk will have the documents scanned into the appropriate case record. Thereafter, these documents will be maintained electronically, and the Clerk will dispose of the paper or; e-mail, ~~or fax~~ version received from the filer.

IT IS FURTHER ORDERED that Vt. LBR 5005-1(c) is revised to read:

VT. LBR 5005-1. FILING DOCUMENTS – FORMAT REQUIREMENTS

- (c) Identification of Filings.** All filings must contain:
- (1) the caption of the case, including the debtor's full name as stated on the petition and the chapter under which the case is currently proceeding, but excluding the debtor's social security number;
 - (2) the case number, except for documents filed with or before the petition, when no case number has yet been assigned;
 - (3) a title describing the filing's contents and/or the relief sought;
 - (4) the name of the party on whose behalf it is filed;
 - (5) signatures that comply with the current requirement regarding original, e-mail, ~~fax,~~ and electronic filing; and
 - (6) the title or function in the case of all persons named in the filed document.

IT IS FURTHER ORDERED that Vt. LBR 5005-2(c) is revised to read:

VT. LBR 5005-2. FILING DOCUMENTS – GENERALLY

...

(c) OFFICIAL RECORD AND DEEMED FILING DATE.

- (1) Electronic Filings.** When a document has been filed electronically, the official record is the electronic recording of the document maintained by the Clerk, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time entered into the CM/ECF System.

~~(2) **Fax Filings.** A document submitted for filing via fax is deemed filed as of the date and time the Clerk's Office enters it into the CM/ECF System, not the time of the transmission of the fax. The party is bound by the document as faxed.~~

~~(3)(2) **E-Mail Filings.** A document submitted for filing via e-mail is deemed filed as of the date and time the Clerk's Office enters it into the CM/ECF System, not the time of the transmission of the e-mail. The party is bound by the document as e-mailed.~~

~~(4)(3) **Non-Electronic Filings.** A document submitted for filing on paper by mail, submission at the Clerk's Office, or delivered directly to the Clerk is deemed filed as of the date and time the Clerk's Office enters it into the CM/ECF System, not the time of receipt. The party is bound by the document as submitted.~~

See also Vt. LBR 1002-1 (deemed filing date for petition); Vt. LBR 9075-1(b)(1) (filing requirements related to emergency filings).

IT IS FURTHER ORDERED that Vt. LBR 5005-4 is revised to read:

Vt. LBR 5005-4. FILING DOCUMENTS VIA OTHER ELECTRONIC MEANS

~~(a) **Filing Documents by Fax.** The Clerk accepts documents received by fax for filing. Parties filing documents by fax are required to simultaneously attempt service on all parties in interest via fax and immediately thereafter fax a certificate of service to the Clerk. Exhibits to pleadings, motions, and other documents that are filed by fax must be clearly marked as exhibits. If documents are faxed, the original of those documents should not be transmitted to the Clerk by other means. Court fees required at the time of filing must be paid pursuant to the provisions of paragraph (d) of this Rule. See also Vt. LBR 1002-1(e); Vt. LBR 5001-2(b) (providing Clerk's fax number).~~

~~(b)(a) **Filing Documents by E-Mail.** The Clerk accepts documents received by email for filing. However, Only in those circumstances where filing via CM/ECF or fax is not possible or practical will the Clerk accept documents delivered via e-mail for filing preferred. T; the appropriate e-mail address to use in filing documents by email such circumstances is: efiling@vtb.uscourts.gov. The documents to be filed must be PDF attachments to the transmittal e-mail. Parties filing documents by e-mail are required to simultaneously attempt service on all parties in interest via e-mail and immediately thereafter e-mail a certificate of service (as a PDF attachment) to the Clerk. Exhibits to pleadings, motions, and other documents that are filed by e-mail must be clearly marked as exhibits. If documents are e-mailed, the original of those documents should not be transmitted to the Clerk by other means. Court fees required at the time of filing must be paid pursuant to the provisions set forth in paragraph (d) of this Rule. See also Vt. LBR 1002-1(d); Vt. LBR 9011-4(d).~~

~~(e)(b) **Service of Documents on the United States Trustee.** To the extent documents other than monthly operating reports are filed electronically, the Office of the United States Trustee will be served and notified electronically, making service by regular, first-class mail unnecessary. Monthly operating reports are still to be served on the Office of the United States Trustee by hand-delivery, regular, first-class mail, or private courier service. See Vt. LBR 4002-1(f) (directing that paper copies with original signatures be served on the Office of the United States Trustee). The Office of the United States Trustee will not accept service of any documents by fax. But see Vt. LBR 9013-1(g).~~

~~(d)~~**(c) Form of Payment.** A party must make payments due in connection with documents filed by electronic means with a credit card. See Vt. LBR 5081-1(c).

IT IS FURTHER ORDERED that Vt. LBR 9011-2(b) is revised to read:

VT. LBR 9011-2. PRO SE PARTIES – REQUIREMENTS, RETENTION OF DOCUMENTS, USE OF CM/ECF

(b) Pro Se Filer’s Duty to Retain Certain Originals of Documents Filed by Fax or E-Mail. A *pro se* party filing documents ~~by fax or~~ by e-mail must retain for five years the originals of all documents that contain original signatures. On request or order of this Court or any other court, the *pro se* filer must provide original, signed documents for review.

IT IS FURTHER ORDERED that Vt. LBR 9011-4(e) through (g) are revised to read:

VT. LBR 9011-4. SIGNATURES

...

~~**(e) — Fax Signatures.** The faxed signature of a party on a document received for filing with the Court will be deemed an original signature for purposes of Fed. R. Bankr. P. 9011, all other Federal Rules of Bankruptcy Procedure, these Rules, and any other purpose for which a signature is required in connection with matters before the Court. Documents filed by an attorney by fax must set forth the attorney’s name, mailing address, e-mail address, telephone number, and fax number, if any. In addition, any other signatory must be identified, at a minimum, with his or her name typed or printed out below his or her signature. See Vt. LBR 1002-1(e).~~

(ef) Signatures of Multiple Persons on a Single Document. When a document requires the signatures of more than one party, the filer may:

- (1) file a scanned document containing original signatures of all necessary signatories;
- (2) identify in the document the parties whose signatures are required, followed by each party filing a document evidencing consent within two business days thereafter;
- (3) identify in the document the parties whose signatures are required, followed by each party creating a docket entry noting the party’s consent within two business days thereafter;
- (4) identify in the document the parties whose signatures are required and through any combination of the procedures described in subparagraphs (1) through (3), above, the consent of each such party evidenced on the record within two business days thereafter; or
- (5) provide the required signatures in any other manner approved by the Court.

(fg) Signature Designating Consent. Consent must be made in an affirmative fashion; it is not sufficient for one party to represent that another party consents to a matter, unless the filer is authorized to, and does, affix the other party’s signature to the document. A party must have his or her consent on the record within two days of the subject document being filed, and may effectuate consent in any manner described in paragraph (f), above.

IT IS FURTHER ORDERED that Vt. LBR 9013-2(g) is revised to read:

Vt. LBR 9013-2. Hearings – On Motions Generally

(g) **Ex Parte Motions under Seal.** If a movant seeks the right to proceed without any other party having notice of the motion (i.e., *ex parte* relief), the movant must submit the *ex parte* motion via e-mail to the Clerk, chief deputy, or law clerk, see Vt. LBR 1002-1(d); see also Vt. LBR 9011-4(d), together with a separate motion requesting that the documents be filed under seal. See Vt. LBR 5003-4. In the motion to seal, the movant must articulate why the public should be denied access to the document; the movant must seek to seal information as narrowly as possible, and for the shortest time possible, to achieve the necessary protection. The movant must serve a copy motion to seal and the underlying *ex parte* motion(s) upon the Office of the United States Trustee by email to by both an email address designated by the Office of the United States Trustee~~fax~~ and regular, first-class mail, or must show cause in the motion to seal why the Office of the United States Trustee is not entitled to notice of the motions. See Vt. LBR 5005-4(c). The movant must also file a proposed order indicating that the sealing of the document(s) is temporary and indicate the conditions and time frame under which the seal will be lifted. Upon completion of the Court’s *in camera* review of the submitted document(s), the Clerk’s Office will notify the movant directly of the Court’s determination with respect to the motion to seal and the underlying *ex parte* motion. For purposes of these Rules, the term “under seal” is synonymous with “inaccessible to the public.”

IT IS FURTHER ORDERED that Vt. LBR 9075-1(b) is revised to read:

VT. LBR 9075-1. EMERGENCY MATTERS

...

(b) PROCEDURES FOR SEEKING RELIEF IN AN EMERGENCY MATTER.

(1) **Filing Requirements.** Absent dire circumstances, the movant must file documents for the Court’s consideration, stating the nature of relief sought, the legal basis therefore, and the facts creating urgency. To alert the Clerk’s Office of the urgent nature of the relief sought, the filer must include the word “Emergency” in the caption of the documents filed, and must either e-file or, e-mail, ~~or fax~~ the documents to the Clerk’s Office.

(2) **Telephonic Notice to Clerk’s Office.** To ensure prompt attention, a party filing an emergency motion must also call the Clerk’s Office to alert a staff member (preferably, the courtroom deputy) that he or she has just filed an emergency motion.

(3) **Notice Requirements.** The movant must notify all affected parties, as well as the case trustee and the Office of the United States Trustee, of any emergency motion. In very time-sensitive instances, the Court may approve notification via telephone, ~~fax~~, or e-mail. Absent dire circumstances, the movant is required to file a notice of hearing and certificate of service indicating the parties notified and the method of notification.

IT IS FURTHER ORDERED that these changes are effective January 1, 2016.

SO ORDERED.

December 30, 2015
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge