

AMENDMENTS TO FRBP EFFECTIVE 12/1/2013

| Rule | Amendment |
|---------------|---|
| 1007(b)(7) | An individual debtor is relieved of the requirement to file OF 23 (<i>Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management</i>) if the provider of the postpetition financial management course “notifies the court” that the debtor has completed the course. The provider may be permitted to file the notification electronically, per the Committee Note to the amended rule. If the provider doesn't file the notification, the debtor must file the OF 23. The ultimate responsibility for establishing that the postpetition financial management course has been completed remains with the debtor. |
| 4004(c)(1) | <p>The introductory language of (c)(1) is revised to clarify that the listed circumstances prevent the court from entering discharge.</p> <p>Subsection (c)(1)(H) is amended to be consistent with the amendment to Rule 1007(b)(7); a debtor's failure to file the OF 23 will preclude entry of discharge only if a provider has not filed a notification that the debtor has completed the postpetition financial management course.</p> <p>Subsection (c)(1)(K) is amended to clarify how reaffirmation agreements affect the entry of discharge. The amended subsection prohibits entry of discharge if “a presumption is in effect under § 524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption.”</p> |
| 5009(b) | This subsection currently requires the Clerk to send a warning notice to an individual debtor who has not yet filed OF 23 that the case may be closed without entry of discharge due to this deficiency. The amended subsection will only require the Clerk to send the warning notice if a financial management course provider hasn't already notified the court that the debtor has completed the postpetition course. |
| 9006(d) | Per the Committee Note, the title of the subsection has been changed from “For Motions–Affidavits” to “Motion Papers” to “draw attention to the fact that it prescribes time limits for the service of motion papers.” The time periods in amended Rule 9006 are unchanged, and apply to motion practice unless another Bankruptcy Rule, Local Rule, or court order prescribes a different period. |
| 9013 and 9014 | These rules are amended to include a cross-reference to amended Rule 9006(d), to call attention to the time limits set out in that rule. Because the time limits in Rule 9006(d) apply only if other applicable time limits aren't set by federal or local rules or court order, the clarifying amendment to Rules 9013 and 9014 will have little impact on this court's local procedure. |

NOTE: FRCP 37 (Failure to Make Disclosures or Cooperate in Discovery; Sanctions), and 45 (Subpoena) are also amended effective 12/1/13. These amendments are applicable to bankruptcy proceedings pursuant to FRBP 7037 and 9016. The most significant changes to Rule 45 are: 1) the court where an action is pending is the issuing court for all subpoenas (and an attorney authorized to practice in the issuing court can issue a subpoena), 2) the subpoena can be served anywhere in the U.S., and 3) the appearance or production is generally limited to “within 100 miles of where the person resides, is employed, or regularly transacts business in person.”

The full text of the amendments to the FRBP and FRCP, with Comments and Committee Notes, can be found at: <http://www.uscourts.gov/RulesAndPolicies/rules/pending-rules.aspx>.

CHANGES TO MISCELLANEOUS FEE SCHEDULE EFFECTIVE 12/1/2013

| Paragraph | Fee Change |
|-----------|---|
| 12 | Fee for retrieval of records from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court: fee has increased from \$53 to \$64 for the first box and \$39 for each additional box retrieved. |
| 13 | This paragraph has been broadened to cover more than NSF checks. A \$53 fee is charged for “any payment returned or denied for insufficient funds.” [NOTE: this fee will also be charged by the PACER Service Center, on the same basis.] |
| 19 | The motion fee of \$176 will now be required for motions to sell property of the estate free and clear of liens under § 363(f). The Miscellaneous Fee Schedule does not explicitly give the court discretion to defer payment of this new fee. |

CHANGES TO THE BANKRUPTCY FORMS

The following Official Forms have been revised as part of the Bankruptcy Rules Advisory Committee’s ongoing Forms Modernization Project:

- OF 3A [Application for Individuals to Pay the Filing Fee in Installments],
- OF 3B [Application to Have the Chapter 7 Filing Fee Waived],
- OF 6I [Schedule I: Your Income],
- OF 6J [Schedule J: Your Expenses].

Conforming changes have been made to OF 6 [Summary of Schedules] and OF 27 [Reaffirmation Cover Sheet] to update the line number cross references to new Schedules I and J.

The following two forms have been revised so that the instructions to the debtor are consistent with the amendment to FRBP 1007(b)(7):

- OF 23 [Debtor’s Certification of Completion of Instructional Course Concerning Financial Management],
- Director’s Form 200 [Required Lists, Statements, Schedules, and Fees].

Both forms instruct the debtor to complete and file OF 23 only if the provider of the financial management course has not already done so.

The three existing subpoena forms – 254 (Subpoena for Rule 2004 Examination), 255 (Subpoena in an Adversary Proceeding), and 256 (Subpoena in a case Under the Bankruptcy Code) – will be replaced with four updated versions (Forms 254, 255, 256, and 257) that incorporate the changes to Civil Rule 45, made applicable to bankruptcy cases by Bankruptcy Rule 9016. The revised bankruptcy subpoenas more closely follow the topic organization of subpoenas in civil cases.

The new bankruptcy forms can be found at:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>