

**COMMON PROCEDURAL QUESTIONS
[BANKRUPTCY COURT]**

1) MOTIONS TO DISMISS:

- a) must be noticed in all chapters. In spite of Bankruptcy Code § 1307(b)'s mandatory language ("on request of the debtor . . . the court shall dismiss a case" under chapter 13), there is no more "automatic dismissal" of a chapter 13 case on motion by the debtor. See *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008).
- b) must be noticed with a hearing date for motions seeking dismissal of chapter 7, 11 and 12 cases. In a chapter 13 case, a hearing is only required if an objection is filed.

2) MOTIONS TO CONVERT BROUGHT BY A DEBTOR:

- a) CHAPTER 7: Bankruptcy Code § 706(a) says a debtor may convert a chapter 7 case to chapter 11, 12 or 13 "at any time." However, the conversion is not automatic, per the Supreme Court's recent decision in *Marrama v. Citizen's Bank of Mass.*, 549 U.S. 365 (2007). AK LBR 1017-1 provides for a 21 day notice period on a debtor's motion to convert a chapter 7 case. AK LBF 39 can be used noticing the conversion motion. No hearing is required unless an objection is filed.

There is an exception to the requirement that the chapter 7 debtor's motion to convert be noticed. In instances where the debtor files the conversion motion in response to the U.S. Trustee's motion to dismiss under § 707(b), and the U.S. Trustee consents to the conversion, the motion does not need to be noticed. AK LBR 1017-1(c).

- b) CHAPTER 11 AND 12: motions to convert need to be noticed with a hearing date per FRBP 2002(a)(4).
- c) CHAPTER 13: a chapter 13 debtor's motion to convert to chapter 7 does not require notice to the matrix. Conversion is automatic

3) RELIEF FROM STAY MOTIONS:

- a) can't be combined with any other motion [AK LBR 4001-1(a)(1)(B)]. A motion for relief from the co-debtor stay under § 1201 or § 1301 must be brought separately from a motion for relief from stay under § 362(d).
- b) effective Dec. 1, 2009, there are different notice periods for motions brought under § 362(d) [14 days per LBR 4001-1(b)(1)], and for relief from the co-debtor stay [20 days under § 1201(d) and § 1301(d)].
- c) the motion needs to be served on both the debtor *and* the debtor's attorney, if there is one. Service upon the debtor's attorney, only, doesn't comply with AK LBR 4001-1(c)(2).
- d) notice of the motion [AK LBF 2 or LBF 3, if co-debtor stay] must be served on either the matrix or the "short list" found in LBR 4001-1(c)(2). In either case, make sure the notice goes to any party having an interest in the property which is the subject of the motion. Sometimes these parties are not on the matrix.
- c) A stipulation or agreement for relief from stay must be noticed, but no fee is due. Also, no fee is due for relief from the co-debtor stay.

4) APPEALS:

- a) a copy of the order or judgment that is being appealed should be attached to the notice of appeal [BAP Rule 8001(a)(1)].
- b) notice of appeal must be filed no later than 14 days from the date of entry of the order or judgment being appealed. In computing this time period, you do NOT count the date of entry of the order or judgment, and you do NOT add 3 days for mailing.
- c) appeals from the bankruptcy court automatically go to the BAP unless the appellant files a separate notice of election to have the appeal heard by the USDC. The notice of election cannot be combined with the notice of appeal;

it must be a separate document, filed at the same time as the notice of appeal.

- d) if the appellant doesn't elect the USDC, the appellant may do so provided the notice of election is filed no later than 30 days after service of the Notice of Appeal. The appellant's election is filed with the BAP.
- e) the BAP's appeal manual is accessible from our court's web site. It is user friendly and will answer most questions you might have about filing an appeal.
- f) still a grey area is how to certify an appeal directly to the 9th Circuit. We haven't had a such a request in this district yet. The BAP appeals manual contains guidance on how to certify an appeal to the Ninth Circuit. Refer to that manual for more information.

5) REAFFIRMATION AGREEMENTS:

- a) there is a new form called "Reaffirmation Documents" effective April 1, 2010. This new form has all the disclosures required by 11 U.S.C. § 524 on the last 4 pages of the form and the "fill in the blank" and signature pages are on the first 3 pages of the form. This form *or* the old "Reaffirmation Agreement" form can be used. If the "Reaffirmation Documents" form is used, make sure that the last 4 pages, containing the required disclosures, is included when the document is filed.
- b) On the old "Reaffirmation Agreement" form, Part D (showing the debtor's income and expenses) must be filled out if the debtor is pro se *or* if the creditor is not a credit union. If this part is not filled out, a hearing on the reaffirmation agreement will be required even if the debtor was represented by an attorney in the negotiation of the agreement, because there is not sufficient information on the form to determine if the presumption of undue hardship arises.
- c) the agreement must be "made," or signed by both parties, before the entry of discharge or it is void. *In re Potter*, 9 ABR 135 (Bankr. D. Alaska 2009).

Also, court will no longer vacate entry of a discharge so that a late reaffirmation can be filed. *Id.*

- d) a debtor may retain real property without reaffirmation, post-BAPCPA, so long as payments to the creditor are kept current. *In re Hamilton*, 9 ABR 138 (Bankr. D. Alaska 2009).

6) OTHER MATTERS:

- a) AK LBR 5005-2(c) requires ECF filers to send the court a courtesy copy of any docketed pleading which exceeds 25 pages (including attachments). Unless the matter is going to be heard within the next day or two, the copy can be mailed to the court promptly after the pleading has been docketed. If the pleading relates to a matter on calendar for the same or next day, please messenger a copy to the court so it will have it in time for the hearing.
- b) telephonic attendance is permitted by AK LBR 9076-1. Any party or attorney who wants to appear at a hearing by telephone should contact the in-court clerks (907 271-2640) at least 3 days prior to the hearing to provide a phone number where they can be reached. If you need to request telephonic attendance on the day of a given hearing, it is best to call the judge's chambers directly to ask to attend by phone, because often the in-court is already in the courtroom getting ready for the hearing and isn't available. A late request for telephonic attendance should be reserved for unanticipated emergencies.
- c) emergency hearings or ex parte motions. When an emergency or ex parte motion is filed, even if a calendar request has also been sent to us, our Local Rules require that a courtesy call be given to chambers to let the judge know that expedited relief is being requested. AK LBR 5005-4(d)(3).
- d) lodging of orders. The order must be in Word or Word Perfect format so the judge's signature can be added and any changes can be made. Also, calendar requests need to be in the same formats, or in a pdf fillable format, so the date and time of a hearing can be inserted.