

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:)
)
Implementation of Revised Local) **General Order #2015-4**
Rules Effective August 1, 2015)

GENERAL ORDER

The United States Bankruptcy Court for the Western District of Pennsylvania (the “Court”) recently published proposed changes to its Local Rules for public comment as part of the formal rule-making procedure which includes: review and comment by the Standing Local Rules Committee, a public comment period and approval by both the District Court for the Western District of Pennsylvania and the Judicial Council for the Third Circuit Court of Appeals. Meanwhile, the Court has determined that it is in the best interest of the Court, the bar and the public to implement a subset of the proposed changes by way of this General Order, to take effect in the interim.

The changes hereby implemented on an interim basis include, but are not limited to, the following: W.PA.LBR 2016-1(c)(5)(C) is added to require the separate itemization of LMP-related fees when counsel submits a fee application. W.PA.LBR 3021-1(f) is deleted to accommodate the decision by the U.S. Supreme Court in *Harris v. Viegelahn*, 135 S.Ct. 1829 (2015). W.PA.LBRs 5005-2(d) and 5005-3(c) are revised to reflect the implementation of an on-line CM/ECF user registration process. W.PA.LBR 7008-2(a) is added to accommodate the decision by the U.S. Supreme Court in *Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 134 S.Ct. 2165 (2014). W.PA.LBR 9019-6(d) is revised to reflect the fact that Local Forms 33 and 34 are combined into a single new web-based form. W.PA.LBR 9020-7(c) is revised to establish consistency with revised W.PA.LBR 2016-1(c)(5)(C) and to clarify that no fees or expenses arising from LMP-related services may be paid until an LMP Final Report is filed pursuant to W.PA.LBR 9020-4(f). W.PA.LBR 9037-1(b)(2)(C) and (b)(3)(B) are revised to accommodate the December 1, 2014 changes to the Bankruptcy Court Miscellaneous Fee Schedule precluding courts from charging a reopening fee if the only reason for reopening the case is to redact personal identifiers.

AND NOW, this 20th day of July, 2015, it is hereby **ORDERED** that:

- (1) The changes to the Local Rules as annexed hereto shall take effect as of August 1, 2015.

- (2) In all other respects, the Court's Local Rules and Forms remain in full force and effect until further order of Court.

July 20, 2015


JEFFERY A. DELZER, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

Rule 2016-1 PROFESSIONAL FEES AND EXPENSES

(a) Fee applications are required in all cases, except those originally filed Chapter 7 cases where counsel for the debtor is compensated via a lump sum payment prior to filing, and in those Chapter 13 cases when counsel opts for compensation pursuant to the “no-look fee” provisions of this Local Bankruptcy Rule.

(b) No compensation or expenses will be allowed, or paid by the estate or any third-party source, to any professional for services rendered in any case unless:

- (1) a motion to approve employment has been filed; and
- (2) an order granting the motion has been entered, except that counsel for debtors in Chapter 13 cases are not required to file such a motion or obtain such an order.

(c) An application for fees and expenses filed pursuant to W.PA.LBR 2016-1(b) shall include the following:

- (1) the date of the order appointing the professional, with a copy thereof attached as an exhibit;
- (2) a statement indicating whether the application is for final or interim compensation and expenses, the total amounts thereof, and the period covered by the application;
- (3) the dates and amounts of previous compensation requested and the amounts approved, if any, including any retainers paid, with copies of the orders approving the prior payments, the retention agreement, an itemization of fees and expenses paid from any source other than the debtor’s estate, a copy of the attorney disclosure statement previously filed pursuant to Fed. R. Bankr. P. 2016, attached as exhibits;
- (4) a list of all timekeepers included in the application, including, but not limited to: the attorneys, paraprofessionals, or other professionals contributing services, number of years in practice, their billing rates, total hours, total dollars, and the blended hourly rate;
- (5) a chronological listing of time and services performed (“Chronological Listing”) or a listing of time and services by category of service arranged

chronologically (“Category Listing”), attached to the Application. Regardless of the approach utilized, both a Chronological Listing and a Category Listing shall include the date, the professional or other timekeeper, a description of the service, and the time involved;

- (A) If a Category Listing is provided, each category shall be preceded by a heading generally describing the services within that category and a brief statement detailing the result to the estate. A separate category shall be included for preparation of the fee application and another for all administrative services such as file maintenance, docket review, typing, filing and service of documents, etc.
 - (B) If a Chronological Listing is provided, a separate summary of time and service by category shall be attached, and each category shall be given an identifying number. This identifying number shall be placed beside each chronological entry to identify the category number into which it falls. A separate category shall be included in the summary for preparation of the fee application and another for all administrative services such as file maintenance, docket review, typing, filing and service of documents, etc.
 - (C) In Chapter 13 cases, if the professional or other timekeeper has performed services in connection with the debtor’s participation in the Loss Mitigation Program, described in W.PA.LBR 9020-1, the application for fees and expenses shall:
 - (i) separately itemize any fees for services rendered and expenses incurred in connection with the debtor’s participation in the Loss Mitigation Program; and,
 - (ii) otherwise comply with the requirements of W.PA.LBR 9020-7(c).
- (6) an itemization of the expenses for which reimbursement is requested:
- (A) Expenses shall be billed and allowed only at actual cost without overhead or add-ons; and
 - (B) If compensation for travel time is requested, unless appropriate,

special circumstances are set forth, typically only fifty percent (50%) of the applicable hourly rate of the professional will be allowed for travel;

- (7) a statement that the professional or other timekeeper is a disinterested person and does not represent or hold an interest adverse to the interest of the estate on the matter on which he was employed;
 - (8) a history of the case in narrative form;
 - (9) a summary cover sheet substantially conforming to Local Bankruptcy Form 9 (Summary Cover Sheet). A fee application filed without a completed cover sheet shall be dismissed without prejudice to refile;
 - (10) a proposed order of Court;
 - (11) in complex Chapter 11 cases, a spreadsheet which reflects all fees that are requested pursuant to the application and a cumulative total for professional by category; and
 - (12) if the Court enters an administrative fee order in a particular case, the terms of the order shall govern;
- (d) All entries in a fee application shall:
- (1) list each service or task separately and state in increments not exceeding one-tenth (1/10) of an hour the amount of time expended in its performance;
 - (2) identify the subject matter of any correspondence or phone call and the party with whom the professional or other timekeeper has communicated if the service involves telephone and/or written correspondence;
 - (3) identify where appropriate, and in the interest of clarity, the subject matter of any hearing or trial with specificity, including the case or adversary number, if the service involved attendance at a hearing or trial;
 - (4) identify any document with specificity if the service involves preparation of that document; and

- (5) include all other information necessary to a full understanding of the services performed and the person and time involved.

(e) Unless leave to seek interim compensation has been allowed by order of the Court, all fee applications filed in Chapter 7 cases will be considered only after:

- (1) the trustee in the case has filed a final account;
- (2) there has been a proposed order of final distribution submitted for the Court's consideration in which the allowed fees are included; and
- (3) notice has been given to all parties in interest of:
 - (A) the last date to file objections thereto; and
 - (B) the hearing date and time, if any.

(f) The Chapter 13 "no look attorney fee" shall be limited to a maximum of \$4,000.00 and the Chapter 13 "no-look expense charge" shall be limited to a maximum in the amount of \$500 (allowable expenses charged include the petition filing fee, postage, copying, certifications and other costs incurred in the administration of the case.) When the fee and expenses charged by counsel is less than or equal to either or both of the no-look fee and expense charge, no fee application is required. The no-look attorney fee and expense charge:

(1) shall include any retainer received;

(2) shall be reduced on a dollar-for-dollar basis for anything paid directly by the client, for instance if the client pays the petition filing fee directly, the no-look expense charge shall be equal to \$500 less the filing fee; and,

(3) does not preclude the award of additional fees and/or expenses by the Court upon the filing of a fee application consistent with these Local Bankruptcy Rules requiring in such case a detailed statement and accounting of fees and expenses charged; *provided however*, in order to "opt out" of the no-look fee provisions of this Local Bankruptcy Rule:

(A) counsel shall have entered into a written fee agreement at the commencement of the representation providing the alternative

of opting out of the no-look fee compensation option and for payment of additional fees in the event of unforeseen, future case complications; and

(B) to the extent counsel seeks such additional compensation, counsel is required to file a cumulative fee application subject to the other provisions of this Local Bankruptcy Rule.

(g) If counsel opts to be paid via the no-look fee, counsel shall nevertheless advise and represent the debtor(s) in a manner consistent with applicable professional standards and be required to perform all matters necessary to properly and timely complete the bankruptcy case, including the following services:

- (1) the debtor(s) will be interviewed by counsel and appropriately briefed on the Chapter 13 process;
- (2) accurate and complete schedules, statements of financial affairs, and related documents will be prepared by counsel;
- (3) all documents will be explained;
- (4) counsel will file a Chapter 13 plan that meets with the requirements of Local Bankruptcy Form 10 (Chapter 13 Plan) and is capable of confirmation;
- (5) in addition to the first meeting of creditors, counsel will attend all hearings and will remain counsel of record until the case is either completed or dismissed, unless the Court has issued an order discharging the attorney as counsel of record;
- (6) counsel will file all motions and objections contemplated in the confirmed plan in a timely fashion; and
- (7) counsel will complete representation without additional charge to the debtor(s) for the duration of the Chapter 13 case.

(h) Counsel fees paid through the Chapter 13 plan shall be at the monthly rate and level set forth in the plan.

(i) Additional fees may be paid through the Chapter 13 plan if either:

- (1) the confirmed Chapter 13 plan contemplated such fees without decreasing the percentage or amount originally to be paid to other creditors through the plan, and proper application for allowance and payment is filed and approved; or
- (2) in instances where the additional fees are not contemplated in the plan, assuming the plan is amended within fourteen (14) days after the application for fees is allowed and such fees are paid from plan resources without decreasing the percentage or amount to be paid to other creditors through the plan.

(j) Notwithstanding W.PA.LBR 2016-1(i), the Court recognizes that additional services provided by debtor's counsel may provide a benefit to the estate. Upon counsel's request, the Court may determine that the benefit to the estate warrants a diminution in the dividend paid to unsecured creditors and an amendment to the plan is not necessary. In such cases, any fee application filed shall specify:

- (1) in detail, the benefit received by the estate; and
- (2) whether and to what extent the unsecured creditors would receive a lower dividend under the existing plan if the fee application were granted and the fees were paid by the trustee from debtor's plan payments.

Rule 3021-1 DISTRIBUTION UNDER CHAPTER 9, 11, AND 13 PLANS

(a) Each creditor shall assure that its current address is on file with the Clerk. Distribution by the disbursing agent shall be to the most recent address on file with the Clerk. The distribution of any proceeds pursuant to a confirmed plan shall be mailed to the address of the creditor as designated pursuant to Fed. R. Bankr. P. 2002(g), if one has been filed.

(b) Within ninety (90) days of confirmation of a Chapter 9 or Chapter 11 plan and each ninety (90) days thereafter until the case is closed, the disbursing agent shall file with the Clerk a brief and accurate accounting of all sums received, all sums disbursed to date, the sums remaining with the disbursing agent, and the proposed disposition thereof.

(c) Following confirmation of a plan, the Chapter 13 trustee shall make distribution to secured and priority creditors in accordance with the terms of the plan. Claims identified in the plan or proofs of claim filed shall be treated for distribution purposes as follows:

- (1) after the filing of a plan and prior to confirmation of such plan, the Chapter 13 trustee is authorized to make distribution of the designated monthly payments as provided in the plan on secured nontax claims, attorney's fees, and utility accounts;
- (2) the debtor or debtor's attorney, if represented, shall review the proofs of claim filed and shall file objections to any disputed claims within ninety (90) days after the claims bar date or, for late filed or amended claims, within ninety (90) days after they are filed and served. Absent an objection, the proof of claim will govern as to the classification and amount of the claim. Objections filed after the ninety (90) days specified herein shall be deemed untimely.

(d) In Chapter 13 cases, failure of an unsecured creditor to file a claim shall inure to the benefit of the other unsecured creditors in the same class. The Chapter 13 trustee shall increase the percentage to be paid accordingly, provided that payments shall not exceed one hundred percent (100%) of the total amount of the allowed unsecured claims (including interest if provided in the plan for such claims). Distributions to unsecured creditors shall be made on a pro rata basis as calculated by the Chapter 13 trustee and not on a per capita basis.

(e) If a secured creditor obtains relief from the automatic stay, the Chapter 13 trustee shall suspend distributions to all creditors with claims secured by the collateral released from the automatic stay, following the Chapter 13 trustee's receipt of notice of the grant of relief. However, the Chapter 13 trustee shall continue to make distribution to other creditors in accordance with the terms of the plan.

(f) In the event that a Chapter 13 plan is not confirmed, then the trustee shall refund all payments to the debtor if the case is dismissed, or to the Chapter 7 trustee if the case is converted.

Rule 5005-2 REGISTRATION AS A FILING USER

(a) A “Filing User” is anyone having a Court-issued CM/ECF System log-in and password. Any attorney appearing before the Court shall be registered as a Filing User. Pursuant to W.PA.LBR 9010-1 and Local Bankruptcy Form 18 (Motion for *Pro Hac Vice* Admission), *pro hac vice* admission requires association with a local registered Filing User.

(b) Any attorney admitted to the Bar of the Western District of Pennsylvania (including those admitted *pro hac vice*), United States trustees and their assistants, private trustees, and others as the Court deems appropriate may apply for registration as a Filing User after attending CM/ECF System training provided by the Clerk.

(c) The Court may grant a *pro se* party to a pending action permission to apply for registration as a Filing User, subject to attending CM/ECF System training provided by the Clerk. If granted, the *pro se* party’s Filing User status is limited solely to the specific pending action. If, during the course of the action, an attorney appears on the party’s behalf, that attorney shall immediately advise the Clerk to terminate the *pro se* party’s registration as a Filing User.

(d) Applications for registration as a Filing User shall be submitted through the Court’s website.

Rule 5005-3 REGISTRATION AS A LIMITED FILING USER

(a) An individual who is registered as a CM/ECF System participant in another district and/or who has attended CM/ECF System training provided by the Clerk may apply for registration as a Limited Filing User. A Limited Filing User's CM/ECF System account is limited to filing proofs of claim, notice requests, withdrawals of claims, transfers of claims, objections to transfer of claim, reaffirmation agreements, notices of mortgage payment change, and notices of postpetition fees, expenses, and charges.

(b) A Limited Filing User will not receive electronic notification of documents or docket activity.

(c) Applications for registration as a Limited Filing User shall be submitted through the Court's website.

Rule 7008-2 REVIEW OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) This Local Rule applies to non-core proceedings and any core proceeding in which a final order or judgment must be entered by a United States District Judge.

(b) A party objecting to the Bankruptcy Judge's proposed findings of fact and conclusions of law shall arrange for the transcription of the record or such portions of it as all parties may agree upon and file a Notice of Transcript Order within fourteen (14) days of the date the objection is filed.

(c) A party objecting to the Bankruptcy Judge's proposed findings or conclusions must file a motion to determine the portion of the record to be transcribed within fourteen (14) days of the date the objection is filed when the parties cannot agree. The objecting party shall arrange for the transcription of the record as determined by the Court and file a Notice of Transcript Order within seven (7) days of the date an order is entered on the motion.

(d) The Notice of Transcript Order shall comply with the caption requirements of W.PA.LBR. 9004-1, reference the date that the proposed findings of fact and conclusions of law were issued, provide the date and time of the hearing that will be transcribed, and provide the date that the transcript was ordered.

(e) A party objecting to the Bankruptcy Judge's proposed findings of fact and conclusions of law shall file all of the exhibits admitted into evidence as a single document prior to filing the objection. The objection shall identify all of the exhibits and the docket number at which the exhibits were filed.

(f) The Clerk shall transmit the proposed findings of fact and conclusions of law, the Clerk's notice to the parties, objections, and responses to the District Court without a transcript when the Notice of Transcript Order is not timely filed.

Rule 9019-6 POSTMEDIATION PROCEDURES

(a) The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement recommendation memorandum to attorneys or *pro se* litigants, but not to the Court.

(b) If a settlement is reached at a mediation, a party designated by the mediator shall submit a fully executed stipulation and proposed order to the Court within twenty-one (21) calendar days after the end of the mediation. If the party fails to prepare the stipulation and order, the Court may impose appropriate sanctions.

(c) Promptly after the mediation conference, the mediator shall file with the Court, and serve on the parties and the Mediation Program Administrator, Local Bankruptcy Form 32 (Mediator's Certificate of Completion of Mediation Conference) showing compliance or noncompliance with the mediation conference requirements of this Local Bankruptcy Rule and whether or not a settlement has been reached. Regardless of the outcome of the mediation conference, the mediator shall not provide the Court with any details of the substance of the conference.

(d) Whether or not the mediation conference results in a settlement, within seven (7) days of the conclusion of the mediation the mediator shall file on the docket of the case the Mediator's Certificate of Completion of Mediation Conference (Local Bankruptcy Form 32) and submit to the Mediation Administrator the Report of Mediation Conference & Mediator Survey through the Court's website at: <http://www.pawb.uscourts.gov/bankruptcy-mediators-upload>.

Rule 9020-7 LOSS MITIGATION PROGRAM FEES, COSTS & CHARGES

(a) Use of the Document Preparation Software requires the debtor to pay a fee of up to \$40.00 to the provider of the Document Preparation Software. Use of the Portal requires the debtor to pay a fee of up to \$40 to the administrator of the Portal. If use of the Document Preparation Software and/or the Portal creates an undue hardship, the debtor may file a motion specifying why the use of the Document Preparation Software and/or the Portal creates an undue hardship and requesting permission to prepare and exchange documents and communications with the Creditor in another manner.

(b) If a proposed LMP resolution provides for a Creditor to receive payment or reimbursement of any fee, cost or charge that arose from the LMP process, all such fees, costs and charges shall be disclosed to the debtor, the trustee, the U.S. Trustee, and to the Court prior to approval of the resolution. Counsel for the Creditor may be entitled to receive a reasonable fee for all work involved with the LMP and shall clearly delineate such fee in the LMP resolution or by amended proof of claim.

(c) Counsel for the debtor is entitled to receive reasonable compensation for all work involved in connection with the LMP process and shall file an application for allowance of attorney fees and costs with the Court, or alternatively accept a “no look” fee in a reasonable amount not to exceed \$1,000 to be paid as an administrative expense. Debtor’s counsel may also treat the Document Preparation Software fee of up to \$40 and the Portal fee of up to \$40 as administrative expenses. Counsel for the debtor shall request compensation for LMP work in excess of the no look fee by way of a fee application substantially conforming to W.PA.LBR 2016-1 which shall separately itemize and designate fees and expenses arising from LMP-related services. No fees or expenses arising from LMP-related services may be paid until an LMP Final Report is filed pursuant to W.PA.LBR 9020-4(f).

Rule 9037-1 REDACTION OF PERSONAL IDENTIFIERS

(a) Parties to transcripts and filers of any documents on the docket or claims register are responsible for reviewing each document in advance for personal identifiers and redacting information as required by Fed. R. Bankr. P. 9037.

(b) If, despite subsection (a), personal identifiers are disclosed in a filed document, the applicable corrective steps shall be taken, including:

(1) If the document is a transcript:

(A) Within seven (7) days of the filing of the transcript, any party intending to redact any portion of the transcript shall file Local Bankruptcy Form 35 (Notice of Intent to Request Redaction of Transcript), with an attached certificate of service demonstrating that Form 35 was served upon the transcriber, all persons whose testimony was transcribed, the debtor and all persons whose personal identifiers are to be redacted.

(B) The party requesting redaction shall serve upon the transcriber, all persons whose testimony was transcribed, the debtor and all persons whose personal identifiers were redacted, Local Bankruptcy Form 36 (Transcript Redaction Request) within twenty-one (21) days after the original transcript was filed. Local Bankruptcy Form 36 shall not be filed on the docket.

(C) Upon the transcriber's receipt of Local Bankruptcy Form 36 (Transcript Redaction Request), no unredacted copies of the transcript shall be sold or otherwise made available.

(D) Transcribers shall file a redacted version of the transcript within thirty-one (31) days after the original transcript was filed.

(2) If the document is a proof of claim:

(A) Regardless of whether the case is open or closed, the creditor shall immediately file a redacted claim on the claims register as an amended claim in compliance with the requirements of W.PA.LBR 3002-2(a).

(B) If the case is open at the time of the amendment, the creditor shall file Local Bankruptcy Form 37 ("Request to Restrict Public Access

to Claim”).

- (C) If the case is closed at the time of the amendment, the creditor shall file a motion to reopen. The creditor shall attach Local Bankruptcy Form 37 to the motion to reopen.
- (D) The creditor shall attach to Local Bankruptcy Form 37 a certificate of service demonstrating that Form 37 was served upon the debtor and all persons whose personal identifiers were redacted.

(3) Any other document filed on the docket:

- (A) If the case is open at the time of the request, the filer of the original document shall file Local Bankruptcy Form 38 (“Request to Restrict Public Access to [specify document]”).
- (B) If the case is closed at the time of the amendment, the filer of the original document shall file a motion to reopen. The movant shall attach Local Bankruptcy Form 38 to the motion to reopen.
- (C) The movant shall attach to Local Bankruptcy Form 38 a certificate of service demonstrating that Form 38 was served upon the debtor and all persons whose personal identifiers were redacted.

(c) Amendments to any filed documents made to redact personal identifiers pursuant to Fed. R. Bankr. P. 9037 shall not be combined with any other amendment to the original document.

(d) Motions requesting the Court to restrict public access to a document shall not be combined with any other motion, except for a motion to reopen pursuant to subsections (b)(2)(C) or (b)(3)(B).