



MEMORANDUM

To: Bankruptcy Practitioners in the Middle District of Georgia
From: Kyle George, Clerk of Court
Subject: Proposed Local Rule Changes

December 1, 2015

THIS IS A REVISION TO THE MEMORANDUM ORIGINALLY PUBLISHED ON AUGUST 10, 2015 EXPLAINING THE REASONS FOR ADDING LOCAL RULES 3018-1, 7005-1, 7008-1, AND 7012-1.

BECAUSE WE FURTHER REVISED LBR 3018-1 SUBSEQUENT TO THE PUBLICATION OF THE AUGUST 10, 2015 MEMORANDUM, THIS REVISED MEMORANDUM IS PROVIDED AND ONLY PERTAINS TO THE LOCAL RULES THAT WERE IMPLEMENTED IN SEPTEMBER 2015 (LOCAL RULES 7005-1, 7008-1, AND 7012-1).

1. Since our last Judge's Meeting in May, 2015, two Supreme Court decisions of importance to the Bankruptcy bench and bar were issued, of which you are no doubt aware. Both the *Wellness International Network, Limited v. Sharif* opinion permitting bankruptcy judges to adjudicate *Stern* claims with the parties' knowing and voluntary consent, and the *Harris v. Viegelhan* opinion regarding Chapter 13 Trustee's post-conversion responsibilities, will require Local Bankruptcy Rule changes. Regarding these two opinions, this memorandum only deals with a change to the local rules regarding the impact of the *Wellness* opinion. Changes to local rules regarding the *Harris* opinion will be disseminated at a later date. This memorandum proposes two additional changes not related to *Wellness*, regarding Ballots in Chapter 11's and adding a requirement to docket certificates of service in Adversary Proceedings.

2. After the *Wellness* decision was reached by the Supreme Court on May 26, 2015, the judges of this court discussed the necessity of adopting a local rule to address the decision's holding that "(c)onsent to adjudication by a bankruptcy court need not be express, but must be knowing and voluntary." Our proposed new local rules model those of the Southern District of New York's local rules regarding consent to entry of orders and their requirement that pleadings contain a statement that if the proceeding is a *Stern*-core matter, the pleading will contain a statement of whether the pleader does or does not consent to entry of final orders or judgments by the bankruptcy judge. The two new Local Rules are proposed as follows:

a. New Local Rule 7008-1:

Rule 7008-1. Statement Regarding Consent to Entry of Orders or Judgment in Core Proceedings

In an adversary proceeding before a bankruptcy judge, in addition to statements required by Bankruptcy Rule 7008, if the complaint, counterclaim, cross-claim, or third-party complaint contains a statement that the proceeding or any part of it is core, it shall contain a statement that the pleader does or does not consent to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

b. New Local Rule 7012-1:

Rule 7012-1. Statement in Responsive Pleading Regarding Consent to Entry of Orders or Judgment in Core Proceedings

In addition to statements required by Bankruptcy Rule 7012(b), if a responsive pleading contains a statement that the proceeding or any part of it is core, it shall contain a statement that the pleader does or does not consent to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

c. Finally, ~~the Adversary Proceeding Cover Sheet, Form B104, will be modified to add check boxes to help in the identification of core or non-core matters and whether parties do or do not consent to the entry of final orders or judgments by the bankruptcy judge.~~ The form will be renumbered as B1040 under the form changes slated for a December 1, 2015 effective date.

(THE JUDGES DECIDED NOT TO REQUIRE A MODIFICATION OF THE FORM)

3. ~~Proposed Change to LBR 3018-1 (Ballots—Voting on Plans):~~

~~—a. Recently, the Clerk's office noted a discrepancy in how ballots in Chapter 11 cases are filed with the court. Some attorneys request ballots be sent back to them in order to be docketed in the case while others request the ballots be sent to the Clerk's office for docketing. In order to standardize the practice, the judges of this Court have directed a modification to our Local Bankruptcy Rule 3018-1 which currently only addresses the requirement for ballot summaries in cases filed under Chapter 11.~~

~~—b. Old Rule 3018-1:~~

~~**LBR 3018-1. Ballots—Voting on Plans**~~

~~For all confirmation hearings the plan proponent shall prepare a written ballot summary in substantially the same form as contained in the Clerk's Instructions. At the confirmation hearing, the original ballot summary and one copy shall be submitted to the Court. At that time it shall be marked as an exhibit for the plan proponent.~~

~~—c. New Rule 3018-1:~~

~~**LBR 3018-1. Ballots—Voting on Plans**~~

~~(a) All ballots accepting or rejecting a plan in a Chapter 11 case filed in this court shall be filed by the voting creditors with the court, and shall be docketed by the court. Voting creditors should file such ballots via ECF or by mail or hand delivery to the court address provided in the Clerk's instructions. The procedures outlined in this subpart (a) may be varied by court order.~~

~~(b) If a plan proponent receives an executed ballot mistakenly sent to it instead of the Clerk's office, the plan proponent shall promptly mail or otherwise deliver the original ballot to the Clerk's office. A plan proponent shall not electronically docket a ballot it receives from another party.~~

~~(c) For all confirmation hearings, the plan proponent shall prepare a written ballot summary in substantially the same form as contained in the Clerk's Instructions. At the confirmation hearing, the original ballot summary and one copy shall be submitted to the Court. At that time it shall be marked as an exhibit for the plan proponent.~~

THE RULE AS MODIFIED ABOVE WAS REVISED AND SENT OUT FOR RE-COMMENT ON OCTOBER 23, 2015.

4. In order to better follow activity and track progress in Adversary Proceedings, we propose to add a new requirement that mirrors Uniform Superior Court Rule 5.2 (2) and requires certificates of service to be filed with the court when certain documents are served. We emphasize that this proposed rule does not require discovery requests and responses to be filed until they are used in the Adversary Proceeding or the court orders filing in accordance with Federal Bankruptcy Rule 7005 (incorporating Federal Rule of Civil Procedure 5 in its entirety). The new proposed rule 7005-1 is as follows:

LBR 7005-1. Certificates of Service in Adversary Proceedings as to Discovery

A party serving Interrogatories, Requests for Production of Documents, Requests for Admission and Answers, or responses thereto upon counsel, a party or a non-party shall file with the court a certificate indicating the pleading which was served, the date of service (or that the same has been delivered for service with the summons), the method of service, and the persons (including addresses) served.

5. I would very much appreciate comments back to me via email no later than September 10, 2015. My email address is Kyle_George@gamb.uscourts.gov. Your assistance in this matter is greatly appreciated.