



MEMORANDUM

To: Bankruptcy Practitioners, US Bankruptcy Court for the Middle District of Georgia
From: Kyle George, Clerk of Court
Subject: Proposed Amendment/Abrogation of Local Rules

November 18, 2024

1. The Judicial Council of the United States has promulgated new Federal Rules of Bankruptcy Procedure (FRBP) which will take effect on December 1, 2024. This memo describes two of our local rules that will need to be either amended or abrogated because of the amended FRBP.

2. **LBR 5005-4(a):** One of the key aspects of the December 1 rule changes is the restyling of the FRBP to make it more readable, bulletize items, and other non-substantive style changes. During the review of the rules, the committee responsible for the revision made some minor changes in keeping with the style changes. One of those changes was the restructuring of FRBP 5005 which added a subparagraph in the new rules. The following shows how the rule was restructured. Note that Rule 5005(a)(1) is now subdivided into 5005(a)(1) and 5005(a)(2):

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ORIGINAL	REVISION
Rule 5005. Filing and Transmittal of Papers	Rule 5005. Filing Papers and Sending Copies to the United States Trustee
<p>(a) FILING.</p> <p>(1) <i>Place of Filing.</i> The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.</p> <p>(2) <i>Electronic Filing and Signing.</i></p> <p>(A) <i>By a Represented Entity—Generally Required; Exceptions.</i> An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.</p> <p>(B) <i>By an Unrepresented Individual—When Allowed or Required.</i> An individual not represented by an attorney:</p> <p>(i) may file electronically only if allowed by court order or by local rule; and</p> <p>(ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.</p>	<p>(a) Filing Papers.</p> <p>(1) <i>With the Clerk.</i> Except as provided in 28 U.S.C. § 1409, the following papers required to be filed by these rules must be filed with the clerk in the district where the case is pending:</p> <ul style="list-style-type: none"> • lists; • schedules; • statements; • proofs of claim or interest; • complaints; • motions; • applications; • objections; and • other required papers. <p>The clerk must not refuse to accept for filing any petition or other paper solely because it is not in the form required by these rules or by any local rule or practice.</p> <p>(2) <i>With a Judge of the Court.</i> A judge may personally accept for filing a paper listed in (1). The judge must note on it the date of filing and promptly send it to the clerk.</p> <p>(3) <i>Electronic Filing and Signing.</i></p> <p>(A) <i>By a Represented Entity—Generally Required; Exceptions.</i> An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for cause or is allowed or required by local rule.</p>

Our LBR 5005-4(a) refers to the old FRBP 5005(a)(2), which is now FRBP(a)(3). While only a minor change, federal law requires that the change be publicly noticed the same as any substantive rule change. Thus, LBR 5005-4(a) is amended to:

LBR 5005-4. Electronic Filing (updated November 20, 2014, December 1, 2018, and December 1, 2024)

(a) Electronic Filing.

(1) Documents filed in paper form when allowed under FRBP 5005(a)~~(2)~~(3) shall be converted to electronic form by the Clerk's office and the electronic document shall be the official document.

(2) A party to a pending action or an individual or entity that files documents with the Court frequently as determined by the Clerk of Court and who is not represented by an attorney may register as a Filing User in the electronic case filing system. Registration shall be in the form prescribed by the Clerk of Court in the Clerk's Instructions.

(3) Petitions, lists, schedules, statements, amendments, pleadings, affidavits and other documents that must contain original signatures or that require verification under FRBP 1008 or an unsworn declaration as provided in 28 U.S.C. § 1746 may be filed electronically by attorneys registered in this electronic case filing system. An original copy containing an original signature must be retained by the attorney who files such a petition, pleading, document, or other paper for one-year after the closing of the case. If the case is later reopened, the one year retention period for documents already on file is not extended. However, any new filings as defined herein filed after the case is reopened shall be retained by the attorney who files such a petition, pleading, document, or other paper for one year after the re-closing of the case.

(4) For filings initially received in paper format as allowed under FRBP 5005(a)~~(2)~~(3), the Court will retain the original documents bearing original signatures of any paper filings where such signatures are a required verification under FRBP 1008 or an unsworn declaration as provided under 28 U.S.C. § 1746 for 6 months after the filing has been converted to an electronic image.

3. **LBR 7001-1:** This local rule allows a motion to recover an automobile or an item of consumer goods repossessed by a creditor as a contested matter instead of through an adversary proceeding:

LBR 7001-1. Adversary Proceedings

In the interest of expediting certain matters covered in Part VII of the Federal Rules of Bankruptcy Procedure, the Court shall consider a motion by a debtor in Chapter 13 to recover an automobile or an item of consumer goods repossessed by a creditor as a contested matter in Part IX of the Federal Rules of Bankruptcy Procedure. Upon the

request of any party in interest, any such motion shall be deemed an adversary proceeding under Part VII of the Federal Rules of Bankruptcy Procedure.

As the JCUS rules committee explains:

In August 2022 the Standing Committee published a proposed amendment to Rule 7001 that would allow the turnover of certain estate property to be sought by motion rather than by adversary proceeding. The original suggestion for an amendment was prompted by Justice Sotomayor's concurring opinion in *City of Chicago v. Fulton*, 141 S. Ct. 585, 595 (2021), in which she wrote that "[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned." The proposed amendment would add an exception to Rule 7001(a)'s general requirement that the recovery of money or property be sought by adversary proceeding. It would allow a debtor to proceed by motion to require the turnover of tangible personal property under § 542(a), thereby permitting a swifter resolution of the matter.

The new FRBP 7001 relevant to our local rule LBR 7001-1 is:

Rule 7001. Types of Adversary Proceedings

An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings:

(a) a proceeding to recover money or property – except a proceeding to compel the debtor to deliver property to the trustee, **a proceeding by an individual debtor to recover tangible personal property under § 542(a)**, or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002.

Thus, the Court proposes to abrogate the current LBR 7001-1 as duplicative with the Federal Rules of Bankruptcy Procedure.

4. The public commentary period runs through December 18, 2024. Comments can be sent to the Clerk via email at kyle_george@gamb.uscourts.gov.