

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

Filed On
7/5/11

In the Matter of the Adoption of
Amendments to Local Bankruptcy Rules

Misc. Proceeding No. 05-60001
GENERAL ORDER NO. 2011-3

ORDER ADOPTING AMENDMENT TO LOCAL BANKRUPTCY RULES

Under the authority granted by 28 U.S.C. § 2071, Federal Rule of Bankruptcy Procedure 9029, and United States District Court Miscellaneous General Order No. 880 dated March 18, 2003,

IT IS ORDERED that the amendments to the Local Bankruptcy Rules 4001-1 and 9075-1 appended hereto are hereby ADOPTED, effective **December 1, 2011**. The amendments were made for the following reasons:

Rule 4001-1, "Motions for Relief From Stay" - this rule was amended by adding new subparagraph (a)(1)(D) and redesignating current subparagraph (D) as (E). This amendment clarifies that a creditor seeking relief from stay must include with its motion copies of documents which establish the existence of a valid security interest or lien and, in addition, documentary evidence which establishes that the movant is the legal holder of the claim.

Rule 9075-1, "Hearings; Trials" - Subparagraph (c)(3)(A) was amended to clarify that the time specified for giving written notice of hearing is a "default" time that may be modified by another rule or by court order.

DATED: July 5th, 2011.

BY THE COURT

/s/ Herb Ross
HERB ROSS
United States Bankruptcy Judge

/s/ Donald MacDonald IV
DONALD MacDONALD IV
Chief United States Bankruptcy Judge

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07/05/11

Rule 4001-1 Motions for Relief From Stay

(a) Motion.

(1) Motions for relief from stay under §§362(d), 1201(c), or 1301(c) of the Code, must:

[A] be so titled;

[B] not be combined with any other motion;

[C] conform to AK LBF 1, if appropriate;

[D] unless attached to the creditor's proof of claim, have attached copies of—

[i] all security agreements, financing statements, titles and other perfection documents necessary to prove the validity of its security interest or lien, and

[ii] all writings that evidence the underlying debt, including any writing necessary to prove that the claimant is the current holder of the debt, or is otherwise entitled to enforce the debt; and

[E] be accompanied by the filing fee.

(2) All applications or requests for relief under any other provision of §362 of the Code, must be in the form of a motion and:

[A] contain in the title the subsection under which relief is sought;

[B] not be combined with any other motion; and

[C] be accompanied by any required filing fee.

(b) Notice

(1) For cases involving termination of a stay under § 362(d) of the Code, notice of the motion must:

[A] state the date on or before which written objection must be filed and served, which date must not be less than fifteen (15) days following the date of service by mail of the notice;

[B] conform to AK LBF 2, if appropriate; and

[C] on or before the date the motion is filed, be transmitted to the United States trustee and served on:

[i] all entities upon whom the motion was served, and

[ii] all persons who have filed an appearance or request for notice.

(2) In cases involving termination of the code debtor stay under §§ 1201 and 1301 of the Code, notice of the motion must:

[A] state the date on or before which written objection must be filed and served, which date must not be less than fifteen (15) days following the date of service by mail, nor more than twenty (20) days after the motion is filed;

[B] conform to AK LBF 3, if appropriate; and

[C] be transmitted to the United States trustee and served on:

[i] all entities upon whom the motion was served,

[ii] all individuals who are liable on the debt with the debtor, and

[iii] all persons who have filed an appearance or request for notice.

(3) If the moving party serves the parties listed in paragraph (1) or (2) instead of serving the master mailing list, the moving party must identify, in any certification of mailing, each party served by name, address and classification in accordance with paragraph (1) or (2), as appropriate.

(c) Service of the Motion. In addition to the entities identified in Rule 4001, Federal Rules of Bankruptcy Procedure, a motion brought under §§ 362, 1201, or 1301 of the Code must be:

(1) transmitted to the United States trustee; and

(2) served on—

[A] in a case under chapter 7, 12 or 13, of the Code, both the trustee and the debtor(s),

[B] if the motion seeks relief from stay as to an act against property, to all entities who hold or claim an interest in the subject property, and

[C] if known, counsel for each entity served.

(d) **Uncontested Motion.** After expiration of the applicable time, if any, within which to object or otherwise respond, if no objection or other appropriate response has been filed, the moving party may:

- (1) file a certificate of mailing conforming to AK LBF 4; and
- (2) lodge a proposed order granting the relief requested.

(e) **Contested Motion Under §§ 362(d), 1201, or 1301.**

(1) For motions brought under §362(d) of the Code, if an objection is timely filed and served:

[A] either party may request a hearing, which request must include the date the motion for relief was filed;

[B] the court will schedule a preliminary hearing and advise the requesting party of the hearing date; and

[C] the requesting party must give notice of the date and time set for the hearing within 24 hours, both telephonically and in writing to:

- (i) the adverse party,
- (ii) trustee,
- (iii) debtor, and
- (iv) counsel for each.

(2) For motions brought under §362(d) of the Code:

[A] (i) if no hearing is held within thirty (30) days after the motion is filed, the automatic stay may be terminated or modified as requested without order of the court, consistent with § 362(e) of the Code; and

(ii) although any party may request a hearing on an objection to a motion for relief from stay, the party desiring the stay to remain in effect must request a hearing and be certain that a hearing is timely scheduled.

[B] (i) If desired, an order may be lodged *ex parte* thirty (30) days after filing of the motion.

(ii) The moving party must file an affidavit of mailing.

(3) In cases involving termination of the code debtor stay under §§ 1201 and 1301 of the Code, any party may request a hearing by submitting a calendar request form (AK LBF 7).

(f) **Preliminary Hearing.**

(1) Parties may present testimony at the preliminary hearing only on the request of a party and approval by the court.

(2) A request to present testimony at the preliminary hearing must be by motion:

[A] served and filed not less than three (3) days before the hearing; and

[B] set forth—

- (i) the name and address of the witness,
- (ii) a concise statement of the testimony to be offered, and
- (iii) a concise statement of the necessity for the testimony.

(g) **Objection to Motion.** The objection to the motion brought under §§ 362(d), 1201, or 1301 of the Code must fairly and completely state the grounds for the objection, including:

(1) if value is placed at issue, the value placed on the property by the objecting party;

(2) if the amount claimed due by the moving party is disputed, the amount that the objecting party contends is due the moving party;

(3) if the objecting party contends the property is necessary to an effective reorganization, a concise statement of the nature of the necessity and when the expected reorganization will become effective; and

(4) if the existence of equity or an equity cushion is placed at issue, an analysis of all liens and encumbrances on the property, including—

[A] the nature and amount of each lien, and

[B] whether the lien is senior or junior to the lien of the moving party.

(h) Motions under §362(c).

(1) A motion to continue the stay under §362(c)(3) or to impose a stay under §362(c)(4) of the Code must:

[A] clearly state—

(i) the date, case number, and date of dismissal of all previous bankruptcy filings within the year prior to the filing of the current proceeding,

(ii) the reasons for dismissal of each previous case(s);

(iii) the date of the filing of the current case;

(iv) a statement as to why the present case is being filed in good faith, including all facts offered to rebut the presumption that the filing was made in bad faith,

(v) the identity of all creditors to whom the stay is requested to be continued, and

(vi) any other facts or circumstances that should be considered by the Court;

[B] be served on

(i) all parties to be affected by the motion,

(ii) the trustee, and

(iii) counsel for the above; and

[C] be transmitted to the United States trustee.

(2) Any objection to the motion must be filed not later than fifteen (15) days after the motion is served.

(3) Although any party may request a hearing on an objection to a motion under §362(c)(3), the party desiring the stay to remain in effect must request a hearing and be certain that a hearing is timely scheduled.

(4) If the motion is timely contested, the debtor must appear at the hearing of the matter and be available to be examined, under oath, by any affected party.

(5) Any objection will be considered a contested matter under Rule 9014, Federal Rules of Bankruptcy Procedure.

(i) Procedures Under §362(l).

(1) Unless otherwise ordered by the court, the Clerk of the Court will forward to the lessor the rental deposit made by the debtor as provided in AK LBR 1002-1(d) no later than five (5) days after the deposit is received by the clerk.

(2) If the debtor files the second Certificate, as required in §362(l)(2), the deposit may be considered as part of any paid post-petition rent (not pre-petition rent), for purposes determining whether the monetary default has been cured, or whether the lease is current.

(j) Mandatory Discovery Exchange.

(1) Unless the court orders otherwise, not later than five (5) days after service of any objection or response to a motion or application brought under §§362, 1201, or 1301 of the Code, which motion is governed by Rule 9014, Federal Rules of Bankruptcy Procedure, the moving party and each objecting party must, to the extent relevant to the issues fairly raised by the motion and objection or objections thereto, comply with the requirements of Rule 26(a)(1) and (2), Federal Rules of Civil Procedure.

(2) The parties may stipulate, in writing, subject to approval by the court, for different times to comply with this subdivision.

(3) Any party refusing or failing to comply with this subdivision may be subjected to such sanctions as the court may deem appropriate under the circumstances, including the assessment of costs and attorney's fees or the exclusion of the evidentiary materials not produced.

Related Provisions:

11 U.S.C. § 361	Adequate Protection
11 U.S.C. § 362	Automatic Stay
11 U.S.C. § 1201	Stay of Action Against Codebtor
11 U.S.C. § 1301	Stay of Action Against Codebtor

Fed. R. Civ. P. 26	General Provisions Governing Discovery; Duty of Disclosure
Fed. R. Bank. P. 4001	Relief from Automatic Stay; Use of Cash Collateral; Obtaining Credit; Agreements
Fed. R. Bank. P. 7001(2)	Scope of Rules of Part VII
Fed. R. Bank. P. 9014	Contested Matters
AK LBR 1002-1	Petitions
AK LBR 7026-1	Discovery and Depositions
AK LBR 9013-1	Briefs; Memoranda
AK LBR 9075-1	Hearings; Trials
AK LBF 1	Motion for Relief From Stay
AK LBF 2	Notice of Motion for Relief From Stay
AK LBF 3	Notice of Motion for Relief From Stay (Codebtor)
AK LBF 4	Certificate of No Objections
AK LBF 7	Bankruptcy Court Calendar Request

Rule 9075-1 Hearings; Trials

(a) Places of Holding Court.

(1) The Bankruptcy Court is located in Anchorage. Hearings and trials are scheduled as needed in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome.

(2) Satellite offices are maintained in the United States District Court Office of the Clerk in Fairbanks and Ketchikan. Operation of these satellite offices is subject to budgetary constraints that may require their closure without notice.

(b) No Hearing Required.

(1) Absent objection, an actual hearing is not required for any "notice and hearing" matter except as otherwise required by the Bankruptcy Code or Federal Rules of Bankruptcy Procedure.

(2) Among the matters that require actual hearing are motions:

[A] to obtain conversion or dismissal of a case where the Code requires a hearing;

[B] objections to claims; and

[C] motions to sell free and clear of liens.

(3) [A] The moving party must, *ex parte*—

(i) lodge a proposed order consistent with AK LBR 9021-1, and

(ii) file a certificate that no objections were made, conforming to AK LBF 4.

[B] If the court determines a hearing is necessary, the court will inform the moving party of the date of the hearing.

(c) Hearings and Calendar Requests.

(1) In a matter in which a hearing is required the moving party must request a hearing date from the court; in all other matters either party may request a hearing date be set.

[A] Hearing dates are obtained from the office of the judge by submitting a completed Bankruptcy Court Calendar Request Form (AK LBF 7) available from the clerk's office.

[B] *[Abrogated]*

[C] The matter may not be promptly scheduled unless a hearing date has been requested from the court in accordance with this paragraph.

(2) [A] Unless one of the parties files a calendar request or unless a hearing is required by a rule or order of the court, a matter is deemed submitted for the court's consideration seven (7) days after the time for filing objections has passed.

[B] Once a matter is deemed submitted, it is the responsibility of the moving party to submit a proposed order to the court, consistent with AK LBR 9021-1.

(3) [A] Unless otherwise provided by court order or rule, written notice of the hearing must be filed and served on the opposing party, trustee, debtor, or debtor's attorney no later than seven (7) days prior to the date of the hearing.

[B] The matter may not be heard, or may be decided adversely to the non-complying party if the notice is not filed and served.

(4) [A] Unless otherwise ordered by the court, in any matter requiring less than seven (7) days notice the initiating party must, in addition to written notice, give telephonic notice of the hearing on or before the same day as written notice is given, to the opposing party, debtor and trustee, or their attorneys, if they are represented.

[B] Telephonic notice is not required if the party upon whom it should otherwise be made has not provided and maintained a current telephone number in the appropriate manner in the official Bankruptcy Court file.

[C] An affidavit or declaration of telephonic notice must be filed with the court at the same time written notice of hearing is filed.

(d) Nonappearance by Requesting Party. Whenever a party who has requested a hearing does not appear in person or by attorney at the hearing, the court may award the opposing party attorney fees occasioned by the non-appearance.

(e) Affidavits/Declarations, Witnesses, and Expected Testimony.

(1) Unless otherwise ordered by the court, to the extent not earlier served and filed, not later than seven (7) days before the hearing, each party must comply with the requirements of Rule 26(a)(3), Federal Rules of Civil Procedure, and serve and file with the court:

[A] all affidavits or declarations under penalty of perjury upon which the propounding party intends to rely; and

[B] a listing of all exhibits intended to be introduced into evidence.

[C] Objections as provided in Rule 26(a)(3), Federal Rules of Civil Procedure must be served and filed not less than three (3) business days before the hearing.

(2) Service under this subsection must be made by personal delivery or by other means that ensures that the recipient thereof receives the materials on or before the due date.

(3) Unless otherwise agreed to by stipulation of the parties or order of the court, no affidavit or declaration under penalty of perjury will be admitted unless the affiant or declarant is made available for cross-examination by the opposing party.

Related Provisions:

11 U.S.C. § 102(1)	Construction of "Notice and Hearing"
Fed. R. Civ. P. 26	General Provisions Governing Discovery; Duty of Disclosure
AK LBR 2002-1	Notices
AK LBR 5071-1	Continuances
AK LBR 9013-2	Motion Practice
AK LBR 9015-1	Jury Trials
AK LBR 9021-1	Orders, Findings, Conclusions, Judgments
AK LBR 9036-1	Request for Notice by Electronic Transmission
AK LBR 9076-1	Telephonic Participation by Parties in Interest
AK LBF 4	Certificate of No Objection
AK LBF 7	Bankruptcy Court Calendar Request
AK LBF 10	Notice of Hearing on Application for _____
AK LBF 12	Certificate of Mailing of Notice of Hearing
AK LBF 24	Notice of Hearing
AK LBF 32	Request for Notice by Electronic Transmission