

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

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

Misc. Proceeding No. 05-60001
GENERAL ORDER NO. 2011-4

Filed On

10/21/11

**ORDER CORRECTING AMENDMENTS
TO LOCAL BANKRUPTCY RULE 4001-1**

This order is entered 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, to correct typographical errors in the version of AK LBR 4001-1 being amended effective December 1, 2011. The corrections are:

AK LBR 4001-1(b)(1)[A]	The notice period for relief from stay motions brought under 11 U.S.C. § 362(d) is fourteen (14) days, rather than fifteen (15) days.
AK LBR 4001-1(b)(2)[A], [C]	The notice period for relief from stay motions brought under 11 U.S.C. §§ 1201 and 1301 is twenty (20) days, rather than fifteen (15) days, and the notice must be served on or before the date the motion is filed.
AK LBR 4001-1(f)(2)[A]	A motion for permission to present testimony at a preliminary hearing must be served and filed no less than five (5) days prior to the hearing, rather than three (3) days.
AK LBR 4001-1(h)(2)	The time for filing objections to motions to continue or impose the stay brought under 11 U.S.C. §§ 362(c)(3) and (4) is fourteen (14) days, rather than fifteen (15) days.
AK LBR 4001-1(i)(1)	The Clerk must forward a rental deposit as provided in AK LBR 1002-1(d) no later than seven (7) days after its receipt, rather than five (5) days.
AK LBR 4001-1(j)(1)	The time for mandatory discovery exchange is no later than seven (7) days after service of an objection or response to a relief from stay motion, rather than five (5) days.

The above deadlines and other amendments to LBR 4001-1 were adopted effective December 1, 2009,¹ and were not intended to be altered by this court's more recent General Order No. 2011-3. The corrections are shown in bold on the corrected version of AK LBR 4001-1 appended to this order. The corrected rule becomes effective on December 1, 2011.

DATED: October 21, 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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¹ See General Order No. 2009-2, entered Jul. 21, 2009 in Miscellaneous Proceeding No. 05-60001.

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 **fourteen (14) 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 codebtor 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 be **twenty (20) days** after the motion is filed;

[B] conform to AK LBF 3, 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,

[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 codebtor 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 **five (5)** 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 **fourteen (14)** 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 **seven (7)** 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 of 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 **seven (7)** 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