



# Clerk's Notes



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November 2008

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Below is an update of recent changes and suggestions for practicing in the United States Bankruptcy Court for the Eastern District of Louisiana.

## I. New and Amended Bankruptcy Rules

A number of new and amended bankruptcy rules take effect on December 1, 2008 and supersede any Interim Rules that became effective with BAPCPA. Some forms are also changing to coincide with the rule amendments, including Official Forms 1 (Voluntary Petition) and 10 (Proof of Claim). To see these rules and forms, go to our website, <http://www.laeb.uscourts.gov>. Click on “Rules and Orders”; click on “Federal Rulemaking”; click on “Rules Effective Dec. 1, 2008” under “Rules Pending Final Approval”.

## II. Privacy Issues

### A. Overview of Transcript Procedure for Attorneys

The Judicial Conference of the United States approved a policy in September 2007 regarding the electronic availability of transcripts of court proceedings. The policy takes into consideration its earlier policy on privacy and the issue of compensation for transcribers and court reporters. The Administrative Office of the U.S. Courts issued procedural guidance to courts to comply with the policy.

Briefly, when a transcript is purchased from a transcriber, it will be filed into the record. Notice will be sent electronically to attorneys and by regular mail to parties. The transcript will not be available electronically through PACER for a period of 90 days, except to court users and by request to the original purchasers. During this period the clerk will make the transcript available for review only in the clerk’s office.

Attorneys have 7 days from the filing of the transcript to file a notice of intent to request redaction, and 21 days from the transcript filing to file the redaction request. *See* Fed. R. Bankr. Proc. 9037. The redacted transcript, if any, will be filed 31 days from the original transcript filing. After the 90-day period has ended, the transcript or redacted transcript will be made available through PACER at the regular PACER charges.

## **B. Proper Redaction of Documents**

Bankruptcy Rule 9037 requires that certain information be redacted from electronic and paper filings made with the court. We received information recently about a filing in a federal court that contained privacy information that was improperly redacted. An attorney used the highlighter function in Adobe to cover certain text in black. The document was electronically filed and became available on PACER. A party viewing the document on PACER copied the black bars covering the text and pasted them into a Word document. The underlying sensitive information (metadata) was then visible. While the “redacted” information is unreadable, the metadata was still embedded in the document.

Commercially available software can be used to redact, not just hide, the private information. Of course, the simplest method is to just omit the information from the original document. Rule 9037 sets out how private information must be redacted.

## **III. CM/ECF**

### **A. Amended or Modified Chapter 13 Plans**

We have noticed that most amended or modified plans are being filed as an attachment to the motion. Please docket the amended or modified plans separately from the motions.

### **B. Schedules - Blank vs. Zero Amount**

When completing schedules, it is necessary to enter 0.00 to reflect a zero amount. If the scheduled amount is left blank, it will be reported as blank, or unknown. This information is necessary to comply with the statistical reporting requirements of BAPCPA. *See* 2005-2007 Committee Note to Form 6.

### C. Pending Motions

The Clerk's Office is in the process of cleaning up outstanding motions. Thus, a motion heard by the court will remain "outstanding" or "pending" until the order is submitted and docketed. Some motions have been pending for several years because the order was never submitted by counsel.

The Clerk's Office is reviewing all of the outstanding motions and taking the necessary steps to terminate the motion. If the motion cannot be otherwise resolved, the office will begin sending out notices of deficiency asking attorneys to submit the orders. Please submit the orders promptly to help us clean up the backlog. Going forward, we urge attorneys to submit the orders to the court within 2 days of the hearing date.

### D. CM/ECF Release 3.3 to be added in early 2009

The office is presently using Version 3.2 of CM/ECF. We are testing Version 3.3, and hope to go live in January 2009. The major change of Version 3.3 is that a new data collection screen must be filled in when a petition is filed. This data will allow the Executive Office of the United States Trustee to meet its statutory requirement to collect BAPCPA-related data.

The release notes for Version 3.3 are available by going to our website. Click on "links" at the bottom of the page; click on "Electronic Public Pacer Service Center"; click on "CM/ECF Release Notes (10/20/08)".

## IV. Motion Days

### A. Late-filed responses

Oppositions and responses to motions must be filed eight calendar days before the noticed hearing date. *See* LBR 9013-2(B). For motions heard in Section B, if the opposition/response is filed late, counsel should contact chambers to advise of the late filing so that the filing can be brought to the court's attention (if possible). If it is a Chapter 13 motion, please contact Evelyn Wegener at 504-589-7844.

## B. Reaffirmation Agreements

Reaffirmation agreements submitted by *pro se* debtors must be set for hearing. When a *pro se* debtor files a reaffirmation agreement, the Clerk's Office will set it for hearing.

If the debtor's counsel will not sign the reaffirmation agreement, it is similar to a *pro se* filing. Debtor's counsel should set the reaffirmation agreement for hearing at the same time it is filed.

## V. Small Business Chapter 11 Cases

Section 1116(1)(A) and (B) of the Code contain a list of documents that small business debtors are required to append to their voluntary petition. If the debtor is an individual, please remember to redact the Social Security Number from the attached federal tax return.

## VI. Finally . . .

Check our website for updates on a regular basis – <http://www.laeb.uscourts.gov>. If you have suggestions on issues that you would like to see addressed in future newsletters, please call Marla Hamilton, Clerk of Court, 589-7820.