

LOCAL RULES SUGGESTED CHANGES

Rule 3070-1

CHAPTER 13 - PAYMENTS

- (a) RETURN OF PLAN PAYMENTS TO DEBTOR. Subject to subsections (b) and (d) below, upon conversion or dismissal of a chapter 13 case prior to confirmation, and unless the court orders otherwise, the standing trustee shall return to the debtor any payments made by the debtor under the proposed plan.
- (b) ATTORNEYS FEES IN A DISMISSED UNCONFIRMED CHAPTER 13 CASE.
 - (1) Upon the entry of an order of dismissal in a chapter 13 case prior to a plan being confirmed, and unless other arrangements are made with the debtor for compensation, counsel for the debtor shall have 14 days from the entry of the order of dismissal within which to file an application for attorney fees ("Application"). The Application shall be served upon the debtor and the chapter 13 trustee, and those parties-in-interest shall have 14 days, ~~including any days for mailing,~~ to respond.
 - (2) The chapter 13 trustee shall not make any disbursement until the 14 day period for filing the Application has expired. If an Application is timely filed, the trustee shall continue to hold the funds in trust and shall not make final disbursement until the court rules on the Application.

Rule 7016-1
PRETRIAL PROCEDURES

(a) PRELIMINARY PRETRIAL CONFERENCE.

- (1) SCHEDULING AND NOTICE. A preliminary pretrial conference may be scheduled at the discretion of the court. The clerk of court shall give at least 21 days notice of the conference.
- (2) PREPARATION BY COUNSEL FOR PRELIMINARY PRETRIAL CONFERENCE.

Counsel shall be prepared to discuss at the conference the following:

- (A) the issues raised by the pleadings;
- (B) issues concerning jurisdiction, venue, or the authority of the bankruptcy court;
- (C) ~~if the proceeding is not a core proceeding or is a core proceeding that the court may only hear and determine with the consent of the parties,~~ whether the parties consent to the bankruptcy judge hearing and determining the proceeding pursuant to 28 U.S.C. § 157(c)(2);;
- (D) the disposition of pending motions;
- (E) the necessity, desirability, and timing of amendments to pleadings, joinder of additional parties, the filing of additional motions, and the amount of time needed for discovery;
- (F) the timing and form of disclosures under Rule 26(a)(1) of the Federal Rules of Civil Procedure, including a statement of when disclosures under (a)(1) were made or should be made;
- (G) changes that should be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure;
- (H) whether use of expert witnesses is contemplated, and if so, whether and when the disclosure of expert information as required by Rule 26(a)(2) of the Federal Rules of Civil Procedure should be required;
- (I) ~~if a jury demand has been made in a core proceeding,~~ whether the parties consent to a jury trial in the bankruptcy court;
- (J) whether the parties have engaged in settlement discussions;
- (K) whether the parties have considered voluntary or court ordered mediation and/or arbitration;
- (L) the need for additional pretrial conferences;
- (M) whether there are witnesses whose testimony could be accommodated at deposition or trial by video conferencing, and if so, what stipulations can be made regarding the appearance of witnesses by video conferencing.

ADMINISTRATIVE GUIDE SUGGESTED CHANGES

COMPUTATION OF RESPONSE TIME

Pursuant to Bankruptcy Rule 9006, the following guidelines are provided to compute the time allowed to respond to a motion or objection.

1. Local Bankruptcy Rule 9014-1(c) provides that a response and accompanying affidavits, if any, to any motion shall be filed within 14 days from the date of the service of the motion, unless otherwise ordered or provided in the Federal Rule of Bankruptcy Procedure or Local Bankruptcy Rules.
2. The designated period of time begins to run by excluding the day of the service but including the last day, unless the last day falls on a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next business day.
3. Bankruptcy Rule 9006 provides for three additional days to perform an act when the period is computed from service and service is done by mail. Thus, if the notice of motion is served by mail (~~postal or electronic~~), three days must be added to the period in paragraph 2 above before computing the due date. If the last day falls on a Saturday, Sunday, or a legal holiday, the next business day is the due date.
4. When computing a response time that is reduced by an order, intermediate Saturdays, Sundays, and legal holidays are included in the computation.

COMPUTATION EXAMPLE PROVIDING 14-DAY RESPONSE TIME AND SERVICE BY MAIL:

Service of motion on June 1 providing 14 days response time plus 3 additional days for mail service.

Response time period = June 2 through June 18

Response due date = June 18 (unless this date falls on a Saturday, Sunday, or legal holiday, in which case the next business day would be designated)*

*If served electronically, the 3 additional days for mail service does not apply, and the response due date would be June 15.

PRETRIAL PROCEDURES
[Rule 7016-1(c)]

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
* DIVISION

IN RE:

JOE SMITH,
Debtor

CASE NO. 99-02272-8-***
CHAPTER *

ABC CORP.,
Plaintiff

vs.

JOE SMITH
Defendant

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ADVERSARY PROCEEDING
NO.: 07-00001-8-***

FINAL PRETRIAL ORDER

DATE OF CONFERENCE: May 5, 2012

Appearance: John Y. Lawyer, Raleigh, North Carolina for Plaintiff; Sam X. Attorney, Fayetteville, North Carolina for Defendant

I. STIPULATIONS

- A. All parties are properly before the court.
- B. The court has jurisdiction of the parties and of the subject matter.
- C. ~~This is a core proceeding, or in the alternative, b~~Both parties have consented to the bankruptcy judge hearing and determining the proceeding pursuant to 28 U.S.C. § 157(c)(2).
- D. All parties have been correctly designated.
- E. There is no question as to misjoinder or nonjoinder of parties.
- F. FACTS:
 - 1. Plaintiff is a New York corporation, licensed to do business and doing business in the State of North Carolina.
 - 2. Defendant is a citizen of Wake County, North Carolina.
- G. LEGAL ISSUES: The legal issue is whether the debt owed by the defendant to the plaintiff is nondischargeable under 11 U.S.C. § 523(a)(2)(B).