

NOV 13 2019

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINASTEPHANIE J. BUTLER, CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF NC

IN RE:

DISBURSEMENT OF UNCLAIMED FUNDS

GENERAL ORDER

Local Rule 3011-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of North Carolina states the following:

## Rule 3011-1

## DISBURSEMENT OF UNCLAIMED FUNDS

- (a) DEPOSIT OF UNCLAIMED FUNDS INTO THE COURT. Funds deposited into the court as unclaimed funds pursuant to 11 U.S.C. § 347(a) shall be deposited via ACH through pay.gov.
- (b) PROCEDURE FOR COLLECTING UNCLAIMED FUNDS. The following shall apply to the deposit and release of unclaimed funds:
  - (1) DEPOSIT OF UNCLAIMED FUNDS INTO UNITED STATES TREASURY. All unclaimed funds collected by the court shall be deposited into the United States Treasury.
  - (2) MOTION TO RELEASE FUNDS. A Motion to Release Funds shall be filed with the Clerk. A form for the Motion to Release Funds can be found in the Administrative Guide to Practice and Procedure.
    - (A) The motion must include:
      - (i) the name, address, telephone number, and a brief history of the creditor who originally filed the proof of claim including the information from the date of the filing of the claim to the present explaining the reasons why the funds were not deliverable at the time of the original distribution;
      - (ii) whether the movant is (a) the owner of record of the claim (the entity shown in the court's records as the holder of the claim), or (b) a successor claimant (an entity other than the owner of record of the claim that has become legally entitled to the funds by assignment or otherwise). If the movant is a successor claimant, copies of all documents evidencing the claimant's right to the funds by assignment or otherwise must be attached to the motion;
      - (iii) whether or not the claimant believes that any other entity may claim an entitlement to the unclaimed funds; and
      - (iv) proof of the claimant's identity and right to funds – see below.
    - (B) The motion shall be served upon the United States Attorney for the Eastern District of North Carolina, 150 Fayetteville Street, Suite 2100, Raleigh, NC 27601, and upon any other entity believed to claim an

entitlement to the unclaimed funds.

(C) A certificate of service must be attached to the original motion filed with the court.

(3) PROOF OF IDENTITY AND RIGHT TO FUNDS. The claimant's identity and right to funds must be shown through at least one of the following methods:

(A) All claimants must provide with the motion:

- (i) an affidavit explaining the claimant's entitlement to the requested funds and bearing the seal and certificate of a notary public;
- (ii) a copy of an unexpired passport or valid driver's license to establish identity of an individual claimant;
- (iii) the last four digits of the social security number or tax identification number of the claimant; and
- (iv) any additional documentation that establishes the claimant's right to the unclaimed funds and evidences its identity (e.g., a copy of a proof of claim or a copy of a utility bill from an old address).

(B) Successor claimants (those other than the owner of record of the claim who have become legally entitled to the funds) must specifically provide with the motion the following additional information:

- (i) Proof of identity of the owner of record, proof of identity of the successor claimant, and documentation evidencing the transfer of claim and the successor's entitlement to collect the funds; or.
- (ii) Representatives of estates must provide proof of identity of the owner of record, proof of identity of the estate's representative and certified copies of documents establishing the representative's right to act on behalf of the estate.

(c) CLAIMANT REPRESENTATIVES.

(1) A motion to release funds must be filed on behalf of claimant representatives by an attorney who is a member in good standing of the North Carolina State Bar and who has been admitted to practice before the United States District Court for the Eastern District of North Carolina.

(2) In addition to compliance with subparagraph (b)(2) and (3) above, claimant representatives must provide to their attorney who shall file with the court:

- (A) proof of the identity of the owner of record and any successor claimant;
- (B) a notarized original power of attorney signed by the claimant on whose behalf the representative is acting, acknowledging the representative's authorization to seek funds on behalf of the claimant and acknowledging that the claimant is aware of the right to seek collection of the funds without the assistance of the representative;
- (C) proof of identity of the representative; and
- (D) a copy of the letter of engagement with the claimant, or other documentation of the agreement between the claimant and the claimant representative, disclosing the fee to be collected by the claimant representative and/or the attorney for the claimant representative.

(3) Unclaimed funds requested by claimant representatives will be paid by check made payable jointly to the claimant and the attorney for the claimant

representative.

- (d) **W-9 REQUIRED.** Pursuant to the Vendor Administration and 1099 Issuance Procedures, the court requires the claimant to complete a W-9 form that includes the claimant's social security or tax identification number and signature. This form may be found on the court's website and must be provided to the court (in person, by email, or by fax) at the time of the filing of the motion to release funds. Failure to complete, sign, and return this form may result in non-payment.

The Administrative Office of the Courts ("AO") has recently developed best practices for bankruptcy courts related to unclaimed funds. In conjunction with these best practices, the AO has created a new Director's Form 1340 for a standardized application for the release of unclaimed funds, to be effective December 1, 2019. In addition, the AO has created Form AO-213P to gather information from claimants necessary for them to be paid through the judiciary's financial system. As a result of the new forms, Local Rule 3011-1 is hereby amended as follows:

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- (b) **PROCEDURE FOR COLLECTING UNCLAIMED FUNDS.** The following shall apply to the deposit and release of unclaimed funds:
- (1) **DEPOSIT OF UNCLAIMED FUNDS INTO UNITED STATES TREASURY.** All unclaimed funds collected by the court shall be deposited into the United States Treasury.
  - (2) **APPLICATION FOR PAYMENT OF UNCLAIMED FUNDS.** An Application for Payment of Unclaimed Funds (Director's Form 1340) shall be filed with the Clerk. The form can be found on the Forms page of the court's website, [www.nceb.uscourts.gov](http://www.nceb.uscourts.gov).
  - (3) **PROOF OF IDENTITY AND RIGHT TO FUNDS.** In addition to the Application for Payment of Unclaimed Funds, the claimant's identity and right to funds must be shown through at least one of the following methods:
    - (A) All claimants must provide with the application:
      - (i) a copy of an unexpired passport or valid driver's license to establish identity of an individual claimant;
      - (ii) the last four digits of the social security number or tax identification number of the claimant; and
      - (iii) any additional documentation that establishes the claimant's right to the unclaimed funds and evidences its identity (e.g., a copy of a proof of claim or a copy of a utility bill from an old address).
    - (B) Successor claimants (those other than the owner of record of the claim who have become legally entitled to the funds) must specifically provide with the application the following additional information:
      - (i) Proof of identity of the owner of record, proof of identity of the

successor claimant, and documentation evidencing the transfer of claim and the successor's entitlement to collect the funds; or

- (ii) Representatives of estates must provide proof of identity of the owner of record, proof of identity of the estate's representative and certified copies of documents establishing the representative's right to act on behalf of the estate.


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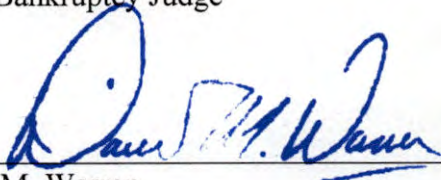
- (1) The Application for Payment of Unclaimed Funds must be filed on behalf of claimant representatives by an attorney who is a member in good standing of the North Carolina State Bar and who has been admitted to practice before the United States District Court for the Eastern District of North Carolina.
- (2) In addition to compliance with subparagraph (b)(2) and (3) above, claimant representatives must provide to their attorney who shall file as a separate entry with the court:
  - (A) proof of the identity of the owner of record and any successor claimant;
  - (B) a notarized original power of attorney signed by the claimant on whose behalf the representative is acting, acknowledging the representative's authorization to seek funds on behalf of the claimant and acknowledging that the claimant is aware of the right to seek collection of the funds without the assistance of the representative;
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  - (D) a copy of the letter of engagement with the claimant, or other documentation of the agreement between the claimant and the claimant representative, disclosing the fee to be collected by the claimant representative and/or the attorney for the claimant representative.
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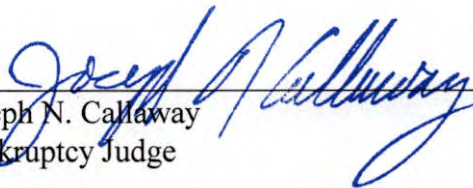
- (d) AO-213P or W-9 REQUIRED. Pursuant to the Vendor Administration and 1099 Issuance Procedures, the court requires the claimant to complete either an AO-213P or a W-9 form that includes the claimant's social security or tax identification number and signature. These forms may be found on the court's website and must be provided to the court at the time of the filing of the Application for Payment of Unclaimed Funds. If the application is being electronically filed, the AO-213P or W-9 shall be filed as "Unclaimed Funds Supporting Documents." Failure to complete, sign, and return this form may result in non-payment.

A red-lined copy of the amendments are attached hereto as Exhibit A.

Entered this 18<sup>th</sup> of November, 2019.

  
Stephani W. Humrickhouse  
Chief Bankruptcy Judge

  
David M. Warren  
Bankruptcy Judge

  
Joseph N. Callaway  
Bankruptcy Judge

## EXHIBIT A

### Rule 3011-1

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      - ~~(iv) proof of the claimant's identity and right to funds – see below.~~
    - ~~(B) The motion shall be served upon the United States Attorney for the Eastern District of North Carolina, 310 New Bern Ave., Suite 800, Federal Building, Raleigh, NC 27601, and upon any other entity believed to claim an entitlement to the unclaimed funds.~~
    - ~~(C) A certificate of service must be attached to the original motion filed with the court.~~
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