

GENERAL ORDER NO. 2010-4

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

Modifications to the
Local Bankruptcy Rules

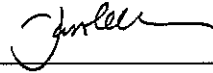
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ORDER NO. 2010-4

Upon the recommendation of the U.S. Bankruptcy Court for the Northern District of Ohio, this Court hereby adopts the recommendation to modify Local Bankruptcy Rules 7026-1 Discovery General, 9013-1 Motion Practice and 9015-1 Jury Trial and also adopts new Local Bankruptcy Rules 7067-1 Deposits (Registry Fund) and 7067-2 Withdrawal of Deposit (see attached).

IT IS SO ORDERED.

For the Court



James G. Carr
Chief Judge
United States District Court

Rule 7026-1 DISCOVERY GENERAL REDLINE VERSION

Discovery Disputes. To curtail undue delay in the administration of justice, no discovery procedure filed under Fed. R. Civ. P. 26 through 37 to which objection or opposition is made by the responding party shall be taken under consideration by the Court unless the party seeking discovery shall first advise the Court in writing that, after personal consultation and sincere attempts to resolve differences, the parties are unable to reach an accord. This statement shall recite those matters which remain in dispute, and, in addition, the date, time, and place of such conference, and the names of all parties participating therein. It shall be the responsibility of counsel for the party seeking discovery to initiate such personal consultation. In the case of a failure to answer a question at a deposition (including a claimed evasive or incomplete answer), such personal consultation may take place at the deposition at which the alleged failure to answer occurs. Unless otherwise ordered by the Court, no discovery dispute shall be brought to the attention of a Judge, and no motion to compel may be filed, more than ~~10~~ 14 days after the discovery cut-off.

Rule 9013-1 MOTION PRACTICE REDLINE VERSION

(a) Memorandum in Support, Certificate of Service, and Notice. A motion or application tendered for filing shall be accompanied by a memorandum in support and, except an ex parte motion or application, or a motion or application which will be noticed by the Clerk, shall be accompanied by (1) a certificate of service in accordance with LBR 9013-3 and (2) a notice to all persons entitled to notice that any objection must be filed within ~~10~~ 14 days, or such other time as specified by applicable Federal Rule of Bankruptcy Procedure or statute or as the Court may order, from the date of service as set forth on the certificate of service, if the relief sought is opposed, and that the Court is authorized to grant the relief requested without further notice unless a timely objection is filed.

(b) Response. Unless otherwise ordered by the Court, a response memorandum must be filed if the relief sought by a motion or application is opposed. The response shall specifically designate the motion or application to which it responds and, subject to Fed. R. Bankr. P. 9006(f), shall be filed within ~~10~~ 14 days from the date of service as set forth on the certificate of service attached to the motion or application. The response shall state with particularity the reasons that the motion or application is opposed.

(c) Reply. Subject to Fed. R. Bankr. P. 9006(f), a reply memorandum may be filed within 7 days after the date of service shown on the certificate of service of the response memorandum. No additional memoranda will be considered except upon leave of Court for good cause shown.

(d) Effect of No Response. Failure to file a response on a timely basis may be cause for the Court to grant the motion or application as filed without further notice to the extent such action would not conflict with any Federal Rule of Bankruptcy or Civil Procedure.

(e) No Oral Arguments on Motions. Motions and applications shall be decided without oral argument on the memoranda unless otherwise provided in these rules or a hearing is scheduled

by the Court.

Rule 9015-1 JURY TRIAL REDLINE VERSION

(a) **The bankruptcy judges of the Northern District of Ohio are specially designated to conduct jury trials pursuant to 28 U.S.C. § 157(e).** Upon the express consent of all of the parties, issues triable of right by jury shall, if timely demanded, be by jury.

Comment: The new language gives bankruptcy judges the authorization of the district court, required by statute, to preside over jury trials, assuming the parties also consent. The district judges apparently approved this language back in February 1998, but for some reason, the sentence did not make its way into the version posted on the district and bankruptcy court web sites. The deleted sentence is already a part of Bankruptcy Rule 9015.

(b) **Any joint or separate statement of consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) and Rule 9015 -- which may be included in a pleading -- shall be filed no later than the time the initial pretrial is held or as otherwise ordered by the court.** Any appeal from a judgment entered pursuant to a jury verdict shall be to the United States Court of Appeals for the Sixth Circuit.

Comment: Bankruptcy Rule 9015(b) provides that if a right to a jury trial exists and a demand is timely made and the bankruptcy judge has been specially designated to conduct jury trials, then the parties may consent to have the jury trial conducted by the bankruptcy judge by jointly or separately filing a statement of consent "within any applicable time limits specified by local rule." The new language sets the deadline as the time the initial pretrial is held or whatever other deadline the court orders. It is important to note that this only deals with consent to have the bankruptcy judge preside over the jury trial. The demand for a jury trial is governed by Fed. R. Civ. P. 38, which is incorporated under Bankruptcy Rule 9015. The deleted sentence is an incorrect statement of current law.

(c) Any party may demand a trial by jury of any issue triable of right by a jury, by serving on the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after service of the last pleading directed to such issue. The demand may be endorsed on a pleading of the party. If a party demands a jury trial by endorsing it on a pleading, as permitted by Fed. R. Civ. P. 38(b), a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand for Jury Trial" or equivalent statement. This notation will serve as a sufficient demand under Rule 38(b). Failure to use this manner in noting the demand will not result in a waiver under Rule 38(d).

Comment: The deleted sentences repeat language from Fed. R. Civ. P. 38, which is incorporated under Bankruptcy Rule 9015. The 10-day limit in Fed. R. Civ. P. 38 was changed to 14 days, effective Dec. 1, 2009. The remainder is identical to Local Civil Rule 38.1.

(d) In the demand a party may specify the issue(s) which it wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party, within 10 days after service

~~of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.~~

Comment: The deleted sentences repeat language from Fed. R. Civ. P. 38, which is incorporated under Bankruptcy Rule 9015. The 10-day limit in Fed. R. Civ. P. 38 was changed to 14 days, effective Dec. 1, 2009.

~~(e) On motion or on its own initiative, the Court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded, or whether a demand for trial by jury in a proceeding shall be granted.~~

Comment: This statement is obvious and unnecessary.

~~(f) The failure of a party to serve and file a demand as required by this Rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without consent of the parties.~~

Comment: The deleted first sentence may be inconsistent with Fed. R. Civ. P. 38 and Local Civil Rule 38.1. The deleted second sentence repeats language from Fed. R. Civ. P. 38.

~~(g) Fed. R. Civ. P. 47 through 51 apply when a jury trial is conducted.~~

Comment: The deleted sentence repeats language from Bankruptcy Rule 9015.

Local Bankruptcy Rule 7067-1: Deposits (Registry Fund)

(a) A party requesting a court order for money to be deposited by the Clerk into an interest-bearing account shall submit a Motion for Order for Deposit and Investment of Funds and a proposed Order for Deposit and Investment of Funds, directing the Clerk to invest the funds in an interest-bearing account. Unless the Court orders otherwise, money delivered to the Court will be deposited into the registry of the Court pursuant to 28 U.S.C. § 2041.

(b) The Motion for Order for Deposit and Investment of Funds and the proposed Order for Deposit and Investment of Funds shall conform substantially to the local forms provided by the Court. Any deviation from the standardized forms shall be explained in bold-faced type within the body of the submitted document.

Local Bankruptcy Rule 7067-2: Withdrawal of a Deposit

(a) A party requesting a court order for the withdrawal and disbursement of funds that have been invested by the Court shall submit a Motion for Order for Withdrawal and Disbursement of Funds and a proposed Order for Withdrawal and Disbursement of Funds, directing the Clerk to withdraw the principal plus all interest accrued from the account, and disburse the funds.

(b) The Motion for Order for Withdrawal and Disbursement of Funds and the proposed Order for Withdrawal and Disbursement of Funds shall conform substantially to the local forms provided by the Court. Any deviation from the standardized forms shall be explained in bold-faced type within the body of the submitted document.

(c) A signed IRS Form W-9 that includes the name, address, and tax identification number for each individual receiving any portion of the distribution shall be provided to the Court in a manner prescribed by the Court, and shall not be filed electronically or scanned into the Court's electronic filing system.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re: <NAME OF DEBTOR(S)>) Case No. <00-00000>
Debtor(s))
-----) Adversary No. <00-00000> [if applicable]
<NAME OF PLAINTIFF(S)>) Judge <_____>
Plaintiff(s))
v.)
<NAME OF DEFENDANT(S)>) MOTION FOR ORDER FOR DEPOSIT
Defendant(s)) AND INVESTMENT OF FUNDS
[if applicable]

<MOVANT> (the “Movant”) moves this Court for an Order directing the Clerk to accept and deposit into the registry of the Court certain funds in the possession of the Movant in this cause of action in the amount of <AMOUNT>, and to invest those funds into an interest-bearing account.

The Movant further moves this Court to direct the Clerk to deduct the appropriate registry fee as a percentage of the income earned on the investment upon closing of the account and prior to any distribution of funds invested.

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. The Court has the authority to grant this motion under 28 U.S.C. § 2041.

NOTICE

You are hereby notified pursuant to LBR 9013-1(a) that any objection must be filed within 14 days from the date of service as set forth on the certificate of service, if the relief sought is opposed, and that the Court may grant the relief requested without further notice unless a timely objection is filed.

Respectfully submitted,

/s/ <Attorney>
<Attorney & Bar Number>
<Law Firm>
<Street Address>
<City, State and Zip Code>
<Phone Number>
Attorney for Movant

CERTIFICATE OF SERVICE

The undersigned certifies that on <date> a true and correct copy of the foregoing [entire title of pleading with Movant's name] was served via the Court's electronic case filing system on:

<name and address> and by regular U.S. mail, postage prepaid, to: <name and address>.

/s/ <Attorney>
<Attorney & Bar Number>

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re: <NAME OF DEBTOR(S)>) Case No. <00-00000>
Debtor(s))
-----) Adversary No. <00-00000> [if applicable]
<NAME OF PLAINTIFF(S)>) Judge < _____ >
Plaintiff(s))
v.)
<NAME OF DEFENDANT(S)>) ORDER FOR DEPOSIT AND
Defendant(s)) INVESTMENT OF FUNDS
[if applicable]

This matter came before the Court on the Motion for Order for Deposit and Investment of Funds (the "Motion") filed by <Movant> ("Movant"). (Docket xx). Movant has alleged that all necessary parties have been served with the Motion pursuant to Local Bankruptcy Rule 9013-1. No party has filed a response or otherwise appeared in opposition to the Motion. For these reasons, it is appropriate to grant the relief requested.

IT IS, THEREFORE, ORDERED that the Motion is granted. The Clerk shall accept and deposit into the registry of the Court the funds cited by the Movant in the Motion, to be delivered by the Movant to the Clerk.

IT IS FURTHER ORDERED that the Clerk shall invest those funds into an interest-bearing account. The initial investment and subsequent re-investments shall be subject to the collateral provisions of Treasury Circular 176.

IT IS FURTHER ORDERED that the Clerk shall deduct the appropriate registry fee as a percentage of the income earned on the investment, not to exceed 10%, upon closing of the account and prior to any distribution of funds invested.

<FOR JUDGES WHO DO NOT USE E-ORDERS, INSERT INK SIGNATURE LINE FOR THE APPROPRIATE JUDGE HERE:

Date: _____

Judge <Name>
United States Bankruptcy Judge>

###

SUBMITTED BY:

/s/ <Attorney>
<Attorney & Bar Number>
<Law Firm>
<Street Address>
<City, State and Zip Code>
<Phone Number>
Attorney for Movant

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re: <NAME OF DEBTOR(S)>) Case No. <00-00000>
Debtor(s))
-----) Adversary No. <00-00000> [if applicable]
<NAME OF PLAINTIFF(S)>) Judge <_____>
Plaintiff(s))
v.)
<NAME OF DEFENDANT(S)>) MOTION FOR ORDER FOR
Defendant(s)) WITHDRAWAL AND DISBURSEMENT
[if applicable]) OF FUNDS

[MOVANT] (the "Movant") moves this Court for an Order directing the Clerk to (1) withdraw the principal that was deposited in this cause of action, plus all interest accrued, from the registry of the Court; and (2) after deducting the appropriate registry fee, disburse the remaining funds to <NAME OF PAYEE> at <ADDRESS OF PAYEE>.

These funds were delivered to the Clerk on <DATE> by <NAME> under an Order of the Court for the deposit and investment of the funds entered on <DATE OF ORDER>. The payee is entitled to the funds for these reasons: <EXPLAIN>

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. The Court has the authority to grant this motion under 28 U.S.C. § 2041.

NOTICE

You are hereby notified pursuant to LBR 9013-1(a) that any objection must be filed

within 14 days from the date of service as set forth on the certificate of service, if the relief sought is opposed, and that the Court may grant the relief requested without further notice unless a timely objection is filed.

Respectfully submitted,

/s/ <Attorney>
<Attorney & Bar Number>
<Law Firm>
<Street Address>
<City, State and Zip Code>
<Phone Number>
Attorney for Movant

CERTIFICATE OF SERVICE

The undersigned certifies that on <date> a true and correct copy of the foregoing [entire title of pleading with Movant's name] was served via the Court's electronic case filing system on:

<name and address> and by regular U.S. mail, postage prepaid, to: <name and address>.

/s/ <Attorney>
<Attorney & Bar Number>

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re: <NAME OF DEBTOR(S)>) Case No. <00-00000>
Debtor(s))
-----) Adversary No. <00-00000> [if applicable]
<NAME OF PLAINTIFF(S)>)
Plaintiff(s)) Judge < _____ >
v.)
<NAME OF DEFENDANT(S)>) ORDER FOR WITHDRAWAL AND
Defendant(s)) DISBURSEMENT OF FUNDS
[if applicable]

This matter came before the Court on the Motion for Order for Withdrawal and Disbursement of Funds (the "Motion") filed by <Movant> ("Movant"). (Docket xx). Movant has alleged that good cause exists for granting the Motion, and that all necessary parties have been served with the Motion pursuant to Local Bankruptcy Rule 9013-1. No party has filed a response or otherwise appeared in opposition to the Motion. For these reasons, it is appropriate to grant the relief requested.

It is, therefore, ORDERED that the Clerk shall withdraw the principal that was deposited in this cause of action, plus all interest accrued, from the registry of the Court.

It is further ORDERED that the Clerk shall deduct the appropriate registry fee as a percentage of interest earned on the investment, not to exceed ten percent (10%), payable to CLERK, U.S. BANKRUPTCY COURT, and disburse the remaining funds as follows:

PAYEE: _____

ADDRESS: _____

AMOUNT: \$ _____, plus accrued interest

It is further ordered that prior to the disbursement of the funds, the Movant shall contact the Financial Division of the Clerk's Office for instructions on submitting Internal Revenue Service Form W-9.

<FOR JUDGES WHO DO NOT USE E-ORDERS, INSERT INK SIGNATURE LINE FOR THE APPROPRIATE JUDGE HERE:

Date: _____

Judge <Name>
United States Bankruptcy Judge>

###

SUBMITTED BY:

/s/ <Attorney>

<Attorney & Bar Number>
<Law Firm>
<Street Address>
<City, State and Zip Code>
<Phone Number>
Attorney for Movant