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UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII
1132 Bishop Street, Suite 250
Honolulu, Hawaii 96813

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November 3, 2015

NOTICE OF PROPOSED AMENDMENTS TO LOCAL BANKRUPTCY RULES

Attached are proposed amendments to the local bankruptcy rules. Any comments on the proposed amendments may be submitted by email to mbd@hib.uscourts.gov by November 23, 2015.

Deletions are shown with a ~~strike-through~~; new text is underlined. Many of the changes concern references to renamed or renumbered Official Forms which become effective December 1, 2015. Some other changes should be self-explanatory. Completely new provisions include the following.

"Stern-related" Provisions. The Judicial Conference approved certain rule amendments in light of the Supreme Court opinion in Stern v. Marshall, 131 S.Ct. 2594 (2011), but were withheld pending decisions in Executive Benefits Insurance Agency v. Arkison, 134 S.Ct. 2165 (2014), and Wellness International Network, Ltd. v. Sharif, 135 S.Ct. 1932 (2015). These amendments are currently on track to become effective in December, 2016. Pending that date, the following local bankruptcy rules adopt the text of the federal rules regarding consent to bankruptcy court jurisdiction: LBRs 7008-1, 7012-1, 7016-1, 9013-1, and 9027-1.

LBR 2015-1. Trustees - Payment of Administrative Expenses. This rule provides procedures for trustees to pay administrative expenses in light of In re Cloobeck, 788 F.3d 1243 (9th Cir. 2015).

LBR 4001-4. Rent Deposit. This rule addresses provisions regarding depositing rent with the clerk in accordance with 11 U.S.C. § 362(l)(1)(B) and new Official Forms.

LBR 7041-1. Dismissal of a Complaint Objecting to the Debtor's Discharge. This rule clarifies the procedure for dismissing a claim objecting to discharge.

LBR 1007-2. List of Creditors

(a) Requirement to File. The clerk may reject for filing a voluntary petition submitted without a creditor list, i.e. the list of names and addresses of entities included or to be included on Schedules D, ~~E, F~~ E/F, G, and H.

* * *

(c) Digital File Format.

(1) Electronic Filing. A person electronically filing a voluntary petition must upload the creditor list immediately after filing the petition. An image of the list must also be included with the petition. When electronically filing an amended list to include additional creditors, only the names and addresses of the additional creditors should be included in the upload and the image of the list.

(2) List Submitted on Paper. A person submitting a paper copy of a voluntary petition for filing must submit both a paper copy of the creditor list and an electronic version on media (diskette, CD, USB drive, etc.) capable of being uploaded in the court's electronic filing system. As an alternative, a creditor list for submission may be created online at the court website, www.hib.uscourts.gov.

(d) Verification. The creditor list must be accompanied by the debtor's verification that all entities included on Schedules D, ~~E, F~~ E/F, G, and H have been listed in the creditor list, using a form that substantially conforms to the local form (Debtor's Verification of Creditor List).

(e) Amended Creditor List. The debtor must file an amended creditor list to reflect any changes or additions to the names and addresses of entities included on Schedules D, ~~E, F~~ E/F, G, or H, including a change of address of the entity or the entity's attorney, or the addition of an entity or an entity's attorney. An amended list is subject to the requirements of subdivisions (b) and (c) of this rule. The debtor is responsible for serving the notice of bankruptcy case, meeting of creditors, and deadlines, as well as any other notices sent by the clerk, on the parties listed in the amended list. The amended list should attach a cover sheet and certificate of service substantially conforming to the local form (Cover Sheet for Amendments).

LBR 1007-3. List of 20 Largest Creditors in Chapter 11 Case

In a voluntary chapter 11 case, the list containing the name, address, and claim of the creditors holding the 20 largest unsecured claims (Official Form ~~4~~ B104/B204) must include the email address of the creditor or agent of the creditor, if known to the debtor.

LBR 1009-1. Amendments to Lists and Schedules

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(c) Notice. Whenever Schedule D, ~~E, F~~ E/F, G, or H is amended to add a creditor or party in interest, the debtor must serve a copy of the notice of commencement of the bankruptcy case, the meeting of creditors, and any deadlines set by the court upon all added entities. The debtor must file a certificate of service to show compliance with this provision. The requirement to file a certificate of service may be satisfied by using the cover sheet substantially conforming to the local form (Cover Sheet for Amendments), containing a section for certifying service.

LBR 1015-1. Joint Administration

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(c) ~~Mailing Matrix and~~ Notice List. The clerk will maintain a single, consolidated ~~mailing matrix~~ list of names and addresses of creditors and parties requesting notice in the lead case.

LBR 2015-1. Trustees - Payment of Administrative Expenses

(a) Expenses Not Exceeding $1,000. The trustee may pay the actual, necessary costs and expenses of preserving the estate, which may include but are not limited to, rent, utilities, taxes, insurance, moving and storage costs, without a court order obtained in advance if:

(1) the amount for any single item does not exceed $1,000,

(2) when all creditors and parties in interest are notified of the need to file a proof of claim, the notice advises that they may file an objection and request for a hearing on this procedure within 28 days after the date of the notice, and

(3) the trustee obtains court approval before or at the time of the court's determination on the trustee's final application for compensation and reimbursement for expenses submitted with the trustee's final report.

(b) Expenses Exceeding $1,000. The trustee may obtain an order approving the payment of administrative expenses exceeding $1,000 by filing a motion and notice substantially conforming to the local form (Trustee's Motion to Approve Payment of Administrative Expense and Notice of Opportunity to Object), providing 14-day notice of a deadline to file an objection. The trustee shall serve the motion and notice on all creditors and parties in interest.

(c) Applicability of Rule. Subdivisions (a)(and (b) of this rule do not apply to the following.

(1) Use of Non-Estate Funds. The trustee may pay administrative expenses from non-estate funds and later seek court approval for reimbursement under Bankruptcy Rule 2016.

(2) Operation of a Business. The trustee may pay administrative expenses related to operating a business, including the leasing of real or personal property, if an order obtained under § 721 authorizes such payments.

LBR 2015-7. Monthly Operating Reports

(a) Cases in Which Reports Are Required. Monthly operating reports shall be filed by the trustee or debtor in possession in the following cases:
(1) all cases under chapter 11~~ and chapter 12~~;
(2) chapter 7 cases, where the trustee is operating a business; and
(3) chapter 12 and chapter 13 cases, if the court so orders.

LBR 2015-9. Trustees - Interim Reports

(a) Requirement to File. Unless the trustee has filed a report of no distribution, a trustee appointed in a case under chapter 7 or chapter 11 must file an interim report in each case that has been pending under the same chapter for more than 2 years, and for which a final report has not been filed. ~~The initial report is due not later than the second anniversary of the trustee's appointment, but not earlier than February 1, 2011.~~ Additional interim reports must be filed at least every 6 months thereafter. This requirement is in addition to any reporting requirements set by the United States Trustee.

LBR 2016-1. Compensation of Professionals

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(e) Chapter 7 Trustees.
(1) Compensation Request in Final Report. A chapter 7 trustee may seek court approval of a final application for compensation by including the request in the trustee's final report.
~~(2) Calculation under § 326(a).~~
~~(A) Cases Filed Before October 17, 2005. In cases filed before October 17, 2005, the chapter 7 trustee's request for approval of compensation must include a calculation of the limitation under § 326(a), the total amount of compensation being sought, and the effective hourly rate of the trustee's compensation, i.e. the amount requested for compensation divided by the actual hours for services performed. The request for compensation must be supported with detailed time records.~~
~~(B) Cases Filed on or After October 17, 2005. In cases filed on or after October 17, 2005, the chapter 7 trustee may seek approval of compensation in the amount calculated under § 326(a) with no requirement to file with the court detailed time records. This provision does not excuse a trustee from the responsibility to maintain contemporaneous time records or compliance with~~

~~requirements that may be imposed by the Office of the United States Trustee.~~

~~(C) Privilege or Excise Taxes.~~ The trustee may include in a compensation request an amount attributable to liability for privilege or excise taxes, such as the State of Hawaii General Excise Tax, to the extent that the total compensation request does not exceed the statutory limitation of § 326(a).

LBR 2083-1. Chapter 13 - General

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(e) Trustee's Motions to Dismiss.

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(2) Motion to Dismiss for Failure to Make Plan Payment or Other Cause.

(A) Motion and Service. Unless these rules provide for a specific alternate procedure, the trustee may request an order dismissing a chapter 13 case by filing and serving on the debtor a motion and notice substantially conforming to the local form (Trustee's Motion to Dismiss Case; Notice of Hearing; Certificate of Service). The motion must be filed and served no later than 21 days before the hearing date.

(B) Conditional Relief. The trustee's motion to dismiss may provide for dismissal of the case unless, within 21 days after the hearing on the motion or such other additional time agreeable to the trustee, the debtor satisfies the plan payment arrearage or other deficiency, or the debtor files a notice of conversion to a case under another chapter. If the debtor fails to satisfy the conditions described above, the trustee may file a declaration to that effect and request that the court enter an order dismissing the case.

LBR 3003-1. Chapter 11 Claims Bar Date

Unless the court orders otherwise, proofs of claim or interest required to be filed in a chapter 11 case under Bankruptcy Rule 3003 must be filed within 90 days after the first date set for the meeting of creditors called under § 341.

LBR 3015-1. Chapter 13 - Plan

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(f) ~~Timeliness of~~ Service. The debtor shall serve the plan on the trustee and all creditors when it is filed with the court. The court may deny, without a hearing, plan confirmation and any plan motion if a certificate of service of the plan or motion is not filed within 7 days after the date of filing of the plan or plan motion.

LBR 3017-1. Disclosure Statement - Approval

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(i) Order Approving Disclosure Statement. If the disclosure statement is approved at the hearing, the plan proponent must promptly prepare and submit for signing an order that substantially conforms to Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof (Official Form ~~B13~~ 313). The proposed order must attach the approved disclosure statement as an exhibit.

LBR 3018-1. Ballots - Voting on Plans

(a) Service. The plan proponent must file a certificate identifying the parties served ~~ballots~~ a ballot (Official Form 314) to accept or reject a chapter 11 plan. The certificate of service may be combined with the certificate showing service of the disclosure statement and plan.

LBR 3070-2. Chapter 13 - Distributions

(a) Need to File Claim.

(1) Need to File Proof of Claim. A creditor must file a timely proof of claim (Official Form ~~B10~~ 410) in order to receive distributions under the plan.

* * *

(e) Trustee's Notice of Filed Claims and Intent to Make Distributions. The trustee must file and serve on the debtor ~~and all creditors~~ a notice of claims filed and intent to make distributions. The notice must list the claims filed and advise that distributions under the plan will be made according to the classification and amount of claims as filed, unless the court already has decided the value of collateral securing a debt, avoided a lien, or otherwise disallowed or modified a claim by specific order. The notice may state that the actual distributions will be subject to changes including, but not limited to, determinations of objections to claims, amended claims, stipulations allowing untimely claims, and awards of attorney compensation. The trustee shall serve the notice of claims filed and intent to make distributions by the later of:

(1) 28 days after the latest claims deadline stated in Bankruptcy Rule 3002(c), and

(2) 60 days after the entry of the plan confirmation order.

LBR 4001-4. Rent Deposit

(a) Deposit with Initial Statement About an Eviction. The clerk shall not accept a deposit of rent under § 362(l)(1)(B) unless all the following requirements are met.

(1) The debtor must file an Initial Statement About an Eviction Judgment Against You (Official Form 101A) with the petition at the commencement of the case.

(2) The debtor must attach to the Initial Statement a copy of the judgment for possession or eviction that was entered prior to the filing of the bankruptcy petition.

(3) The Initial Statement must be signed by the debtor(s), contain the landlord's name and mailing address, and have the boxes checked which certify that:

(A) under applicable state or nonbankruptcy law, the debtor has the right to stay in the residence by paying the landlord the entire delinquent amount; and

(B) the debtor is depositing the rent that would be due during the 30 days after filing the bankruptcy petition.

(4) The rent deposit must be in the form of a certified or cashier's check or money order, payable to the landlord.

(b) Service of Initial Statement on Landlord. The debtor must mail the Initial Statement to the landlord and file a certificate of service stating that the debtor has done so.

(c) Statement About Payment of an Eviction Judgment. Upon payment in accordance with § 362(l)(1)(B)(2) of the entire amount owed as stated in the eviction judgment, the debtor must:

(1) certify full payment of the judgment amount in a Statement About Payment of an Eviction Judgment Against You (Official Form 101B), filed within 30 days after filing the bankruptcy petition;

(2) file a notice substantially conforming to the local form (Notice of Deadline to Object to Certification Regarding Rent Payment), providing the landlord notice of a 14-day objection deadline; and

(3) mail to the landlord the Statement About Payment of an Eviction Judgment and the Notice of Deadline to Object and file a certificate of service stating that the debtor has done so.

(d) Non-Compliance. Failure to comply with the certification requirements in the relevant statutory provisions and this rule will result in the clerk's transmittal to the landlord of a certified copy of the docket indicating the absence of the debtor's certifications and a notice regarding applicability of the automatic stay provision of § 362(b)(22).

LBR 4004-3. Discharge of Individual Debtor

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(c) Chapter 12 and Chapter 13.

(1) Discharge After Completion of Plan Payments. Upon completion

of all payments due under a confirmed plan, a chapter 12 or chapter 13 debtor in a case commenced on or after October 17, 2005, must file with the court a certification of eligibility for a discharge substantially conforming to ~~Procedural~~ Form ~~B283~~ 2830 (Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q) ~~[B283]~~). If the certification indicates that the debtor is eligible for a discharge with respect to § 1228(a) and (f) or § 1328(a) and (h), the clerk will serve on all creditors a notice that any objection to the certification and the granting of a discharge must be filed within 30 days after the date of the notice. If a debtor fails to file the certification under this rule by 30 days after the date of filing of the trustee's final report and account, the clerk may close the case without the granting of a discharge.

LBR 4008-1. Reaffirmation

(a) Reaffirmation Agreement Deficiency. If a reaffirmation agreement ~~[B240A]~~ is not accompanied by the Reaffirmation Agreement Cover Sheet [Official Form ~~B27~~ 427] required under Bankruptcy Rule 4008(a), or if the cover sheet or the reaffirmation agreement is incomplete, the court may not consider a reaffirmation agreement for approval, or may find, without a hearing, that a presumption of undue hardship has not been rebutted to the satisfaction of the court. The cover sheet is incomplete if it does not contain the debtor's income and expenses as stated in the reaffirmation agreement and as stated in schedules I and J, together with an explanation of any differences between these amounts.

LBR 5005-1. Filing Papers - Requirements

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(c) Defective Pleadings and Papers.

(1) The clerk may reject without filing a petition that is submitted:

(A) by a person who may not file a voluntary petition pursuant to an order of this court or any other federal court;

(B) in paper form without the original signature of the debtor, and, if any, the joint debtor and the attorney for the debtor(s); or

(C) without a creditor mailing ~~matrix~~ list.

LBR 5073-1. Photography, Recording Devices & Broadcasting

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(c) Electronic Devices Policy. Visitors to the courtroom and office space of the United States Bankruptcy Court, District of Hawaii, 1132 Bishop

Street, Honolulu, Hawaii, are (unless the court directs otherwise) allowed to carry and use various electronic devices as stated below.

(1) Visitors may bring into the office space and courtroom electronic devices, such as cellular phones, smartphones, laptop computers, tablet computers, or similar functioning devices having wireless communications capability. All devices are subject to a security inspection.

(2) Except while inside the courtroom, visitors may use such devices to make telephone calls and to transmit and receive data communications, such as email or text messages, or to access the Internet.

(3) In the courtroom, visitors may use such devices to take notes, transmit and receive data communications, and access the Internet, but not for telephone calls. Telephone ring tones and other sounds produced by devices must be disabled while in the courtroom. Only quiet keyboards may be used in the courtroom.

(4) As provided elsewhere in this rule, photography, audio and video recording, and broadcasting are prohibited in the courtroom and office space at all times.

(5) The presiding judge may prohibit or further restrict use of such devices by all persons prior to or during a proceeding when necessary to protect the rights of the parties or to assure the orderly conduct of the proceedings. This policy does not supersede the witness exclusion rule.

(6) A visitor who fails to adhere to this policy or to the presiding judge's directions may be removed from the courtroom or office space or subjected to other sanctions.

LBR 6004-1. Sale of Estate Property

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(d) Trustee's Sale of Property Under $2,500. When all of the nonexempt property of the estate has an aggregate gross value less than $2,500, the clerk may give a general notice of intent to sell such property other than in the ordinary course by including such notice in the notice of ~~commencement of the case, the notice~~ of need to file a proof of claim, or other ~~such~~ notice, without further notice or a hearing. An objection to this procedure must be filed not later than 21 days after the date of filing of such notice.

LBR 7001-2. Effect of Dismissal of Bankruptcy Case on Pending Adversary Proceeding

Whenever a case is dismissed, the court may, without notice or hearing, dismiss without prejudice any adversary proceeding filed in connection with that case ~~will be dismissed without prejudice unless otherwise ordered~~, and remand any proceedings that have been

removed to the bankruptcy court in connection with that case ~~shall be remanded~~.

LBR 7008-1. General Rules of Pleading

In an adversary proceeding, the complaint, counterclaim, cross-claim, or third-party complaint must contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.

LBR 7012-1. Responsive Pleadings

In an adversary proceeding, a responsive pleading to a complaint, counterclaim, cross-claim, or third-party complaint must contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.

LBR 7016-1. Pretrial Procedures

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(b) Scheduling Conference.

(1) Conference Date and Time. Upon the filing of a complaint, the plaintiff must obtain a scheduling conference date and time from the courtroom deputy.

(2) Scheduling Conference Statement. Not later than 7 days before the scheduling conference, each party must file with the court and serve on all other parties a scheduling conference statement addressing the following subjects:

(A) nature of the action, including a concise factual background;

(B) jurisdiction and venue, including consent to entry of final orders or judgment by the bankruptcy court;

(C) demand for jury trial;

(D) disclosures under Fed. R. Civ. P. 26 not covered by the report required under Fed. R. Civ. P. 26(f);

(E) discovery completed, in progress, and any pending motions related to discovery issues;

(F) special procedures;

(G) related cases in any state or federal court; and

(H) prospects of settlement, including use of the bankruptcy alternative dispute resolution program.

* * *

(e) Determining Procedure for Entry of Final Orders or Judgment. The court shall decide, on its own motion or a party's timely motion, whether:

(1) to hear and determine the proceeding;

(2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or

(3) to take some other action.

LBR 7026-1. Discovery

(a) Conference of the Parties.

(1) Conference Timing. The conference of the parties required under Fed. R. Civ. P. 26(f) must be held not later than 14 days before the scheduling conference.

(2) Discovery Plan. The parties must make a good faith attempt to agree to a discovery plan at the conference of the parties. The discovery plan should cover the items listed in Local Form H52 - Report of the Parties' Planning Meeting, ~~Fed. R. Civ. P. Appendix of Forms.~~ The plaintiff is responsible for preparing a report outlining a proposed discovery plan. In lieu of filing a written report, the parties may report orally on their discovery plan at the scheduling conference.

LBR 7041-1. Dismissal of a Complaint Objecting to the Debtor's Discharge.

(a) Order Required. An order is required for dismissal of a complaint objecting to the debtor's discharge, whether it is a voluntary dismissal by the plaintiff or upon the parties' stipulation or settlement agreement.

(b) Notice. Unless the court orders otherwise, notice of a plaintiff's request or the parties' stipulation or settlement agreement for dismissal of any claim objecting to discharge must be filed in both the adversary proceeding and the underlying bankruptcy case. Notice to the trustee, United States trustee, creditors, and other parties in interest is sufficient upon transmission of the CM/ECF notice of electronic filing. The notice must include the following information.

(1) Statutory Basis Asserted in Objection to Discharge. The notice must identify the adversary proceeding and briefly describe the provision relied on in the objection to discharge, e.g., "11 U.S.C. § 727(a)(4) - debtor knowingly and fraudulently made a false oath or account."

(2) Disclosure of Consideration. The notice must disclose any consideration, monetary or otherwise, received or to be received by the plaintiff in connection with dismissal of any claim objecting to discharge, as well as the source of the consideration. If there is no consideration, the notice must explicitly state that.

(3) Opportunity to Object. The notice must advise that absent an objection filed within 14 days after the date the notice is filed, the court may enter an order dismissing the objection to discharge without further notice or hearing.

LBR 7054-1. Adversary Proceedings - Taxation of Costs

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(b) Proposed Bill of Costs. The prevailing party may request a taxation of costs by filing and serving upon all other parties to the adversary proceeding:

(1) an itemization of costs in a proposed bill of costs substantially conforming to the procedural form (Bill of Costs [~~B263~~ Form 2630]);

(2) a memorandum setting forth the grounds and authorities supporting the request;

(3) a declaration that the costs were actually and necessarily incurred, together with copies of any invoices, receipts, or other documents as evidence of the costs;

(4) a declaration describing the prevailing party's efforts to resolve any disputes about the claimed costs; and

(5) a notice of the deadline to file an objection under subdivision (d) of this rule.

LBR 7055-1. Default

(a) Request for Entry of Default. A party ~~requesting~~ seeking entry of default must file a request substantially conforming to the local form (Request for Entry of Default and Declaration in Support) ~~support the request with a declaration regarding sufficiency of service of the summons and copy of the complaint~~. The declaration must identify the applicable provision authorizing service under Bankruptcy Rule 7004 or Fed. R. Civ. P. 4 and, if served in a place not within any judicial district of the United States, the specific authority for service under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents or other method of service.

LBR 9013-1. Motion Practice

(a) In General.

(1) Applicability. For purposes of this rule, a motion is a written request for an order, whether denominated as a motion, application, objection, notice, or otherwise. This rule applies to any motion unless another local rule or court-issued form specifically provides for a different procedure.

(2) Moving Party's Burden. The motion must state the legal basis for the relief requested and must include admissible evidence to support the factual basis of the motion.

(3) Authority to Enter Final Order. In a motion filed in a contested matter under Bankruptcy Rule 9014, the moving party must raise

in that motion any objection or challenge to the bankruptcy court's authority to enter a final order on the motion. In a response to a motion filed under Bankruptcy Rule 9014, the responding party must raise in that response any objection or challenge to the bankruptcy court's authority to enter a final order on the motion. Failure to raise an objection or challenge to the bankruptcy court's authority as provided in this rule will be deemed consent to the bankruptcy court's entry of a final order on the motion.

LBR 9019-1. Settlements.

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(b) Stipulations.

(1) Procedural and Other Matters. A party may seek approval of a stipulation regarding procedures, deadlines, discovery, and other similar matters by submitting an order pursuant to LBR 9072-1(i), without filing a motion.

(2) Stipulated Judgments and Dismissals in Adversary Proceedings.

(A) In General. A stipulated judgment or dismissal regarding the dischargeability of a particular debt under § 523, or other claims in an adversary proceeding which do not affect the estate, may be submitted for approval by the court with notice limited to parties to the adversary proceeding.

(B) Stipulated Judgment Dismissing Objection to Discharge. ~~Notice of a stipulated judgment which includes dismissal of an objection to the debtor's discharge under § 727 must be given to the trustee and the United States trustee and entered on the docket in the bankruptcy case.~~ Dismissal of a claim objecting to discharge under § 727 is governed by LBR 7041-1.

LBR 9027-1. Removal

A party filing a notice of removal must include in the notice a statement that upon removal of the claim or cause of action the party does or does not consent to entry of final orders or judgment by the bankruptcy court. After removal, any party who has filed a pleading in connection with the removed claim or cause of action must file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.

LBR 9037-1. Privacy Protection of Personally Identifiable Information

(a) Motion to Redact. If a document in the public record contains unredacted personally identifiable information protected under Bankruptcy Rule 9037 or other authority, a party may request that the court restrict remote electronic access to the document by filing a motion substantially conforming to the local form (Motion to Redact). The filing fee may be waived if the filer is the individual or represents the individual whose personal information is the subject of the motion.