

## **PART IV. THE DEBTOR: DUTIES AND BENEFITS**

### ***L.B.R. 4001-1 Automatic Stay - Relief From.***

#### **(a) Motions; Service.**

No summons is required. The movant shall file with the Bankruptcy Clerk a certificate of service attached to the motion, evidencing the mode of service and the names and addresses of the parties served, and a certificate of conference evidencing compliance with Local Bankruptcy Rule 9014-1(d)(1). The motion shall contain a notice of the requirement of the filing of a response to the motion as set forth in subdivision (b) of this rule. A motion for relief from the automatic stay shall be served on the following parties:

- (1) The debtor, and, if the debtor is represented by an attorney, the attorney;
- (2) Any attorney for a committee appointed or elected in the case, or if no attorney has been employed to represent the committee, through service on its members; and if no committee has been appointed in a chapter 9 or 11 case, the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d);
- (3) Any party scheduled in the case as holding a lien, with respect to a motion seeking relief from the stay of an act against property;
- (4) The United States Trustee;
- (5) Any trustee or examiner appointed in the case; and
- (6) All parties requesting notice pursuant to Local Bankruptcy Rule 2002-1(j).

#### **(b) Response Required.**

Any party opposing the motion for relief from stay shall file a response within 14 days from the date of service of the motion. Such response shall include a detailed and comprehensive statement as to how the movant can be “adequately protected” if the stay is to be continued. If no response is filed, the allegations in the motion may be deemed admitted, and an order granting the relief sought may be entered by default. The motion for relief shall contain a statement in substantially the following form:

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT (ADDRESS OF CLERK'S

OFFICE) BEFORE CLOSE OF BUSINESS ON (MONTH) (DAY), (YEAR), WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE “ADEQUATELY PROTECTED” IF THE STAY IS TO BE CONTINUED.

**(c) Discovery.**

The time within which responses to discovery requests on automatic stay issues are due under Bankruptcy Rules 7028-7036 is shortened from 30 to 14 days. Similarly, depositions on automatic stay issues may be taken commencing at the expiration of 14 days after service of the motion for relief from the automatic stay.

**(d) Attorney Certification.**

In any evidentiary hearing conducted on a motion for relief from the automatic stay, all counsel shall certify before the presentation of evidence: (1) that good faith settlement discussions have been held or why they were not held; (2) that all exhibits, appraisals and lists of witnesses (it is presumed that the debtor(s) will testify) have been exchanged at least 2 days in advance of the hearing date; and (3) the anticipated length of the hearing. Exhibits shall be marked in advance of the hearing and two bound, marked sets of exhibits shall be presented to the court prior to the commencement of the hearing.

**(e) Preliminary Hearings; Dallas and Fort Worth Divisions.**

Absent compelling circumstances warranting an alternative procedure, evidence presented at preliminary hearings in the Dallas and Fort Worth Divisions on motions for relief from the automatic stay will be by affidavit only. The party requesting the hearing shall serve evidentiary affidavits at least 7 days in advance of such hearing; the responding party shall serve evidentiary affidavits at least 2 days in advance of such hearing; the party requesting the hearing is responsible for determining that all other hearing participants known to such party are aware of this rule. In a chapter 13 case, if the movant is a creditor claiming a lien on real property, then its affidavit shall include a detail of any alleged payment delinquency and provide a current chronological payment history beginning with the first payment alleged to be delinquent. Failure to file an evidentiary affidavit, or the failure of an attorney to attend a scheduled and noticed preliminary hearing may be grounds for granting the relief, regardless of the filing of a response to the motion.

**(f) Continuation or Imposition of Automatic Stay.**

- (1) Motion Required.** Any party that seeks a continuation or imposition of the automatic stay under 11 U.S.C. §§ 362(c)(3)(B) or -(c)(4)(B) shall file a motion with the court, and shall set the motion for hearing on notice to all parties against whom the movant seeks to continue or impose the stay.
- (2) Filing, Service and Setting.** The motion shall be filed and served promptly upon the filing of a petition for relief under the Bankruptcy Code so that it may be heard by the court within 30 days of the date of the filing of the petition, and so that parties may be given at least 21 days' notice of the hearing without the need for an expedited or emergency hearing, which will be granted only in exceptional circumstances. A copy of the motion and notice of hearing shall be served on all parties against whom the debtor seeks to continue or impose the stay, and proof of such service shall be filed within 2 days after service of the motion.
- (3) Content of Motion.** The motion shall:

  - (A) specifically allege the identity of the creditor(s) as to which the movant seeks to continue or impose the stay;
  - (B) identify, by case number, any and all prior bankruptcy filings by the debtor;
  - (C) state whether the debtor has had more than one previous case pending within the preceding year;
  - (D) state whether any previous case was dismissed within the preceding year after the debtor failed to perform any of the acts set forth in 11 U.S.C. § 362(c)(3)(C)(i)(II);
  - (E) state whether there has been a substantial change in the financial or personal affairs of the debtor and, if so, support the statement with specific factual allegations;
  - (F) state whether any creditor moved for relief from the automatic stay in a previous case and, if so, the disposition of that motion; and
  - (G) allege specific facts entitling the movant to relief.
- (4) Evidence Presented at Hearing.** At the hearing on the motion, the movant shall present evidence demonstrating that the new case is filed in good faith as to the creditor(s) to be stayed. The movant shall be present at the hearing to testify.

## **PART V. COURTS AND CLERKS**

### ***L.B.R. 5003-1 Bankruptcy Clerk - General Authority.***

#### **(a) Bankruptcy Clerk Authorized to Amend Form of Mailing List.**

The Bankruptcy Clerk shall be authorized to change the form of the mailing list required by Local Bankruptcy Rule 1007-1(a) to meet requirements of any automated case management system hereafter employed by the Bankruptcy Clerk. The Bankruptcy Clerk shall give appropriate notice to the bar of any such change in form.

#### **(b) Bankruptcy Clerk Authorized to Refuse Certain Forms of Payment.**

The Bankruptcy Clerk shall maintain a list of all attorneys and law firms whose checks or credit or debit cards have been dishonored. The Bankruptcy Clerk may refuse future check, credit or debit card payments from such attorneys or firms and require an alternative form of payment.

### ***L.B.R. 5004-1 Disqualification - Recusal.***

A Presiding Judge, upon recusal in any case, shall request that the chief bankruptcy judge or the Bankruptcy Clerk reassign the case.

### ***L.B.R. 5005-1 Filing Papers - Requirements.***

#### **(a) Filing the Petition.**

The petition shall be filed in the office of the Bankruptcy Clerk responsible for the division in which the case is to be filed.

#### **(b) Signature Block.**

The signature block of every pleading shall include the name, state bar number, if applicable, address, telephone number and email address, if applicable, of the party or attorney filing the pleading. In the case of an attorney, the attorney's firm name and the name of the party represented shall also be included.

#### **(c) Attorney Name and Address.**

The attorney's name, state bar number, mailing address, telephone number, email address, if applicable, and the name of the party represented shall appear on the upper-left corner of the first page of every pleading, except on proposed orders.

#### **(d) Form of Pleadings.**

- (1) The heading, style and caption shall appear beneath the name of the attorney.