

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

Amending Local Bankruptcy Rules for the U.S. Bankruptcy Court, Western District of Washington, Effective May 1, 2013

GENERAL ORDER NO. 2013-3

In response to the U.S. Supreme Court's decision in Stern v. Marshall, 131 S. Ct. 2594 (June 2011), and pursuant to Federal Rules of Bankruptcy Procedure 9029, on October 25, 2011, this Court published proposed amendments to its Local Bankruptcy Rules. Specifically, a proposed new rule 7012-1 and amendments to existing rule 9015-1 were circulated to the members of the bar and the judiciary in this District and published on the Court's website for comment.

The General Order Authorizing Bankruptcy Judges to Make and Amend Local Rules of Practice and Procedure, issued by the United States District Court, Western District of Washington, dated November 21, 2005, and Rule 9029(a) of the Federal Rules of Bankruptcy Procedure authorize the bankruptcy judges of this district to make and amend rules of practice and procedure governing all bankruptcy cases and proceedings in this district, subject to the limitations set forth therein.

Subsequent to the publication of the amendments to the Local Bankruptcy Rules the Court also considered amendments to Local Bankruptcy Rule 5011-1 which have not been published for comment. Accordingly, these amendments are adopted by General Order but are not incorporated into the Local Bankruptcy Rules at this time.

NOW, THEREFORE, it is hereby ORDERED:

1. A new rule 7012-1, as attached hereto as Exhibit A, is approved and adopted by the judges of this Court and is hereby incorporated in the Local Bankruptcy Rules of United States Bankruptcy Court for the Western District of Washington effective May 1, 2013.

2. Local Bankruptcy Rule 9015-1, amended as set forth in Exhibit B attached hereto, is approved and adopted by the judges of this Court and is hereby incorporated in the Local Bankruptcy Rules of United States Bankruptcy Court for the Western District of Washington effective May 1, 2013.

3. By this General Order, the Court approves revisions to Local Bankruptcy Rule 5011-1, as set forth in Exhibit C, attached hereto, effective May 1, 2013. These amendments will govern the practice in this district but because the rule-making procedures of publication and comment were not undertaken with respect to these Rule 5011-1 amendments, the Local Bankruptcy Rules themselves are not formally changed by this adoption.

DATED: April 2 , 2013

FOR THE COURT:

Honorable Paul B. Snyder
Chief Judge

Honorable Marc Barreca
Honorable Philip H. Brandt
Honorable Timothy W. Dore
Honorable Brian D. Lynch
Honorable Karen A. Overstreet

RULE 7012-1. Notice Regarding Final Adjudication and Consent to Entry of Final Orders or Judgments by Bankruptcy Judge in an Adversary Proceeding

(a) **Notice Regarding Final Adjudication and Consent.** In an adversary proceeding before a bankruptcy judge, in addition to the statements in the pleadings required by Fed. R. Bankr. P. 7008(a) and 7012(b), each party shall file a separate document with its initial pleading (the complaint, counterclaim, cross-claim, third party complaint, answer or other responsive pleading) to be entitled Notice Regarding Final Adjudication and Consent. The Notice Regarding Final Adjudication and Consent shall include a repetition of the statements required by Fed. R. Bankr. P. 7008(a) and 7012(b) and shall include whether:

- (1) the matter is core or non-core,
- (2) if core, the matter requires consent by the parties to entry of final orders or judgments by the bankruptcy judge, and,
- (3) if consent is necessary, the party consents.

(b) **Removed Actions.** A party filing a notice of removal pursuant to Fed. R. Bankr. P. 9027, shall file with the notice of removal a separate document entitled Notice Regarding Final Adjudication and Consent containing the information set forth in (a) above. Not later than 14 days after the filing of the notice of removal and the Notice Regarding Final Adjudication and Consent, any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice

of removal, shall file, in addition to the statements required by Fed. R. Bankr. P. 9027 (e)(3), a separate document entitled Notice Regarding Final Adjudication and Consent containing the information set forth in (a) above.

(c) **Deemed Consent.** Failure by a party to file a Notice Regarding Final Adjudication and Consent as required by this rule or by a date certain fixed by court order shall constitute that party's consent to entry of final orders or judgments by the bankruptcy judge.

(d) **Hearing.** The bankruptcy judge may set a hearing at any time prior to trial regarding the ability of the bankruptcy judge to enter final orders or judgments.

Comment

Rule 7012-1(a)(2) refers to matters which, although core under 28 U.S.C. § 157, require the consent of the parties to the bankruptcy court's entry of a final order or judgment. See e.g., Stern v. Marshall, 131 S. Ct. 2594, 2610 (2011).

RULE 9015-1. JURY TRIAL

(a) Applicability of Certain Federal Rules of Civil Procedure and District Court Local Rules. Fed. R. Civ. P. 38, 39, 47-51, and 81(c) (insofar as applicable to jury trials) and Local Rules W.D. Wash. LCR 38, 47, 51, apply in cases and proceedings.

(b) Demand for Jury Trial. Where a jury trial is demanded as permitted by Fed. R. Civ. P. 38, said demand shall be made, whether or not also made in a pleading, in a separate document entitled "Demand for Jury Trial" and be filed

(1) with the notice of removal; or

(2) with a party's first pleading, or within 30 days of the filing of a notice of removal (pursuant to Fed. R. Bankr. P. 9027 and LBR 9027-(1), whichever is earlier).

(c) Consent to Have Trial Conducted by Bankruptcy Judge.

(1) If there is a right to jury trial and a demand under Fed. R. Civ. P. 38(b) is timely filed, the parties shall consent or not (28 U.S.C. § 157(e)) to have the trial conducted by the bankruptcy judge by filing a statement of consent or withholding of consent by the later of the time for answer or reply, if the demand is made in a complaint or cross- or counter-claim, or 21 days after the demand is made.

(2) In any proceeding in which a demand for a jury trial is filed, the bankruptcy judge shall determine whether the party has a right to a jury trial and whether the demand was properly filed. If so, the bankruptcy judge shall preside at the jury trial if all parties consent. If there is no consent, the bankruptcy judge may designate a party to file a motion in accordance with LBR 5011-1 for withdrawal of reference.

(d) No Right Created. This rule does not expand or create any right to jury trial where the right does not otherwise exist.

RULE 5011-1. WITHDRAWAL OF REFERENCE

(a) Caption. A motion for withdrawal of reference shall be designated: "Motion for Withdrawal of Reference."

(b) Filing and Service of Papers/Judicial Recommendation. A motion for withdrawal of reference and any response and reply documents, including memoranda and supporting materials as required by Local Rules W.D. Wash. LCR 7(b), shall be filed with the clerk of the bankruptcy court. In addition, the bankruptcy court judge may file a recommendation regarding the motion, including but not limited to a recommendation as to whether reference should be withdrawn, the nature and status of the case, and whether there is a need for an expedited resolution. A motion for withdrawal of reference shall be filed and served promptly after service of any pleading or document in which the basis for the motion first arises. Response documents shall be filed and served no later than 14 days after service of the motion for withdrawal. If a response is filed, a reply, if any, shall be filed and served no later than 21 days after filing of the motion.

(c) Transmittal of Documents to District Court. Except as otherwise ordered by the bankruptcy court, 28 days after the filing of the motion for withdrawal of reference, or after a response, reply and judicial recommendation have been filed, whichever is earlier, the clerk of court of the bankruptcy court shall transmit to the district court the motion and related documents that have been filed with the bankruptcy court and any recommendation of the bankruptcy judge. No documents shall be filed by the parties in response to the judicial recommendation. All further documents pertaining to the motion for withdrawal shall be filed with the clerk of the district court. Documents relating to other matters in the bankruptcy case or adversary proceeding shall be filed with the clerk of the bankruptcy court unless otherwise ordered by the bankruptcy court or district court.

(d) Proceedings in District Court. A motion for withdrawal of reference shall be assigned to a district court judge. Unless otherwise ordered by the district court, a motion for withdrawal of reference will be decided by the district court without a hearing. A party desiring oral argument should so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of its motion or responsive memorandum. The district court may grant or deny the motion in whole or in part, and may make such orders as it deems appropriate for the orderly disposition of the case or proceeding. Upon entry of a dispositive order by the district court, the clerk of court of the district court shall forward a copy of the order to the parties and transmit a copy to the bankruptcy court for filing in the bankruptcy case.