

Middle District of Tennessee
Bankruptcy Court

Practitioners Handbook

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Introduction

This handbook is a guide to some aspects of practice in the Middle Tennessee Bankruptcy Court. Please bring any inaccuracies to the attention of the Clerk of Court. Please also freely suggest topics you would like to see added and inform the Clerk if existing topics need to be expanded or clarified.

Although this handbook is published by the Office of the Clerk, practitioners are ultimately responsible for the accuracy of their pleadings, and for ensuring they are properly and timely filed with the court.

LBR 9013 Motions

Local Bankruptcy Rule 9013-1 mandates the filing of certain motions on 21 day negative notice. Note the use of the words “certain motions” – although the list is expansive, 9013 motions are the exception, not the rule (so to speak). For an actual list of those motions, see the drop down listing on the CM/ECF “9013 Motions with Notice” menu. If you do not find your particular motion on that list, the special provisions of 9013 likely do not apply. If you read LBR 9013 and believe it does apply, but cannot find your motion on our CM/ECF menu, inform the Clerk of Court. All 9013 motions should be available on the menu.

LBR 9013-1 directs the movant to file and serve the motion together with a hearing notice in the form of Appendix G of the local rules, a copy of the proposed order, and a certificate of service. The hearing notice is completed by referencing the 9013 Calendar on the court’s web site. Because 9013 permits entry of movant’s order on default of the respondent, a hearing on the motion will only be placed on the court’s hearing docket in the event a timely response is properly filed.

What motions invoke LBR 9013? The beginning text of the rule provides the answer. “Whenever Title 11 of the United States Code, any rule or any order authorizes an act ‘after notice and a hearing’ or similar phrase” However, pursuant to subparagraph (b)(1), the following motions are excluded from 9013's unique notice and default provisions:

- (a) Motions to Convert Chapter 12 or Chapter 13 Cases filed by the Trustee;
- (b) Motions and agreed orders under LBR 4001-1;
- (c) Motions in a case controlled by a separate case management order;
- (d) Motions in adversary proceedings, except motions for entry of default judgment whether issued by the Clerk or by the court under FED.R.CIV.P. 55(b) made applicable by FED.R.BANKR.P. 7055(b);
- (e) Motions for withdrawal or substitution of attorneys pursuant to LBR 2092-1;
- (f) Motions to dismiss or convert a case to Chapter 7 under § 1112;
- (g) Motions for Voluntary Dismissal of a Chapter 13 Case;
- (h) Motions to approve reaffirmation agreements;
- (i) Motions under FED.R.BANKR.P. 9023 or 9024, except motions under LBR 9024-1
- (j) Motions to Dismiss under LBR 2003-1(a)

Additionally, subparagraph (b)(2) directs you to certain other local rules with which you must comply if you are filing any of the following: a Notice of Employment Application, a Notice of Fee Application, a Motion to Modify or Amend Chapter 12 Plan, an Objection to Claims, a Motion for Payment of Unclaimed Funds, Motions to Modify or Amend Chapter 13 Plans, a Motion for Lien Avoidance, a Motion to Employ or Compensate an Auctioneer or Real Estate Agent or a Notice of Abandonment.

Note: Responses to LBR 9013 motions “shall state prominently the deadline for filing responses, the date, time, location, and specific courtroom (if applicable) of the scheduled hearing and a description of the motion or NOTICE to which it relates.” (LBR 9013-1(a)(4).)

To expedite a 9013 motion, see the section “Expediting Matters.”

9013 Motion Procedures

1. Prepare the Motion, Proposed Order, and Certificate of Service.
2. Prepare Notice in the form of local rules' Appendix G.
 - calculate a Response Deadline, which must be at least 21 days from the date of service
 - select the Hearing Date (no sooner than 7 days after the Response Deadline), Time, and Location:
 - Go to the Court's website at <www.tnmb.uscourts.gov>
 - Select Calendars > 9013 Availability Calendar
 - Add no less than 28 days to your Response Deadline and select the next available date as follows:
 - Chapter 12 & 13 motions are heard on Wednesdays at 8:30 a.m. in Courtroom 1.
 - Chapter 7 & 11 motions are heard on Tuesdays at 9:00 a.m. in Courtroom 1 (Judge Mashburn's cases), Courtroom 2 (Judge Walker's cases), Courtroom 3 (Judge Harrison's cases).
3. Merge the Notice, Motion, Proposed Order, and Certificate of Service into one document.
4. File the Notice, Motion, Proposed Order, and Certificate of Service.
 - In CM/ECF, select "Bankruptcy > 9013 Motions with Notice."
 - Select the proper motion.
 - Enter case number.
 - Select the Attorney or Add/Create New Attorney.
 - Select the Party.
 - Attach the Document.
 - Enter the Hearing Date, Time, & Location, and the Response Date.
 - Refer your Motion to an existing docket entry, if applicable.
 - Make the appropriate entries for the Certificate of Service.
 - Modify the docket text of your motion if necessary and file.
5. If a Response to your motion is filed, attend the hearing.
6. If no Response is filed, file your Submitted Order in CM/ECF after the Response Date.

§ 362 Motions for Relief from the Automatic Stay

The court has set aside special times on the weekly court docket for Motions for Relief from the Automatic Stay to be heard. Because of this, it is advisable that these be filed as stand-alone motions, as opposed to including multiple prayers for relief. Local Bankruptcy Rule 4001-1 address stay relief.

Motions for Relief from Stay will be scheduled for a preliminary hearing within 30 days of being filed. For Nashville¹ Chapter 13 cases, preliminary hearings are held in Courtroom 1 on Wednesdays at 8:30. For Nashville Chapter 7 & 11 cases, preliminary hearings on § 362 motions are held in Courtroom 1 on Tuesdays at 8:30, before other 7 & 11 matters are heard in the appropriate judge's courtroom². For Cookeville and Columbia cases (all chapters), preliminary hearings are held in those cities if a court docket is scheduled there within 30 days. If no court docket is scheduled for the appropriate city within 30 days, the preliminary hearing will be held in Nashville on Tuesdays or Wednesdays, depending on chapter. Except on motion and order, Cookeville and Columbia continuation hearings following an initial Nashville preliminary hearing will return to Cookeville or Columbia.

Motions for Relief from Stay are standard motions as far as CM/ECF filing is concerned. They are listed first in the "Other Motions / Applications" menu as a convenience

¹ Nashville cases have the number 3 at the beginning of the formal case number (3:07-08797). Columbia and Cookeville cases have a 1 and 2, respectively. Think alphabetical: (1) Columbia, (2) Cookeville, and (3) Nashville.

² Courtroom 1 - Judge Mashburn, Courtroom 2 - Judge Walker, Courtroom 3 - Judge Harrison.

Expediting Matters

The court has developed procedures to assist parties who, on rare instances, need “action on notice shorter than that fixed by the Federal Rules of Bankruptcy Procedure or by LBR 9013-1 or LBR 9014-1.” These procedures are found in LBR 9075-1, Emergency Motions and Orders, and in the CM/ECF menu options.

The local rules contemplate three scenarios for requesting expedited relief. Under the first, a party may request an expedited hearing to resolve a matter by ruling and court order. Under the second and third, the matter has been resolved already by (2) ruling, or (3) agreement, and an order is being requested that memorializes and enforces that resolution.

At one time, the court mandated that motions for requested relief be filed separately from the motion to expedite the matter. Parties may now file a unitary document moving the court for relief and asking that the matter be heard on an expedited basis.

Although addressed in the checklist below, it is worthy of further mention that LBR 9013 matters may be expedited. To do this, do not file a 9013 Hearing Notice and Proposed Order with the Motion and Certificate of Service and do not fill in the Hearing Date, Time, & Location, and Response Date entries when filing the motion. Additionally, you will select “Expedited Hearing on” from the prefix drop-down near the end of the filing procedure, submit your order as “Expedited,” and select the appropriate judge.

Procedures for Motions for Expedited Hearings

1. In CM/ECF, select “Bankruptcy” or “Adversary” from the main menu, as appropriate.
2. Select the proper underlying motion by choosing “Motions > Other Motions/Applications” or “LBR 9013 > 9013 Motions with Notice,” under the Bankruptcy menu, or by choosing “Motions>Adversary Motions/Applications” or “LBR 9013 Motions” under the Adversary menu.
3. Enter the appropriate case number.
4. Make the appropriate party selection.
5. Attach your Motion and Certificate of Service.

Note: you may see additional screens which are motion-specific (i.e., fee screens).

Note: if you are expediting what would otherwise be a 9013 Motion, leave the Hearing Date, Time, Location, and the Response Date blank, and do not file the 9013 Notice or the proposed order with your motion.

6. You may refer your document to an existing docket entry. For instance, if you are attempting to get an expedited hearing on a motion already filed, you may refer the motion for an expedited hearing to the earlier-filed motion.
7. Make the appropriate Certificate of Service selection and entry.
8. ***Most Importantly***: when the “Docket Text: Modify as Appropriate” page appears, type in the text box “Motion for Expedited Hearing On.” This adds the “Expedited Hearing” language to whatever motion you have chosen.
9. Confirm the final docket text and submit.
10. File your Submitted Order using the following procedures.

Procedures for Filing Expedited Submitted Orders
(for a Hearing, or for a matter already resolved by ruling or agreement)

1. In CM/ECF, select “Bankruptcy” or “Adversary” from the main menu, as appropriate.
2. Select “Proposed Order > Submitted/Expedited - Submitted Agreed/Submitted . . .”
3. Enter the appropriate case number.
4. Select “Submitted Order.”
5. Make the appropriate party selection.
6. Attach your submitted order.
7. You may refer your submitted order to an existing docket entry (i.e., your motion for expedited hearing). If you refer, you must select the document to which you are referring.
8. If an Agreed Order, check “Agreed” (which will add “agreed” to the docket text and signal the judge that the issue is resolved).
9. ***Most Importantly:*** answer “Yes” to the question “Is this an EXPEDITED Order according to LBR 9075-1?” This attaches the prefix “Expedited” to your docket text and triggers an email to the judge’s chambers.
10. Select the appropriate judge for the case.
11. Confirm the final docket text and submit.

Reaffirmations

Since BAPCPA became effective in October 2005, Bankruptcy Courts nationwide have wrestled with implementing various procedures to comply with the complex statutory requirements for reaffirmation agreements. The biggest question – do we need a hearing? – is answered in Middle Tennessee by simply following the CM/ECF menus and reading the explanatory notes therein. *If a hearing is required, you don't even need to file a motion!*

Reaffirmation Procedures

1. In CM/ECF, select “Bankruptcy” then “Reaffirmations” from the menus.
2. Select either “Reaffirmation Agreement (Hearing Requested)” or “Reaffirmation Agreement (No Hearing Requested).”

Note: see the criteria for “Hearing” or “No Hearing” at step 6, below. It also appears on a later CM/ECF screen.

3. Enter the appropriate case number.
4. Make the appropriate party selection.
5. Attach the Reaffirmation Agreement.
6. Confirm your Hearing Requested/No Hearing Requested choice based on the criteria listed.

Hearing Required: Pro Se (non-real estate), or Not Certified by Debtor(s) Attorney (nonreal estate), or Presumption of Undue Hardship (non-Credit Union creditor).

No Hearing Required: Debtor(s) Attorney Certified, or Real Estate, or Presumption of Undue Hardship (Credit Union creditor).

7. Enter the Creditor name in the text box.
8. If selecting “No Hearing” earlier, confirm that the agreement does not contain a Motion. You need not attach a motion for a hearing, but be certain *not* to include one if no hearing is needed.
9. You may Refer your document to an existing event, or not. If you refer, you must select the document to which you are referring.
10. Make the appropriate Certificate of Service selection and entry.
11. Confirm the final docket text and submit.

Motions for § 522(q)(1) Orders for Chapter 12 & 13 Discharges

BAPCPA requires a hearing within ten days prior to the entry of a discharge order in Chapter 12 and 13 cases in order for the judge to find that there is no cause to believe that the exemption limitations in § 522(q)(1) are being exceeded by a debtor who (1) is a convicted felon, or (2) might have a securities felony charge pending.

Why does this matter in a state with some of the stingiest homestead exemption laws in the country? Because BAPCPA modified the domiciliary rules (180 days here, 730 days there) such that a newly-relocated Tennessee debtor might use another state's exemption laws.

The bad news: all new-law Chapter 12 and 13 debtors need a § 522(q)(1) order within ten days of discharge. The good news: the court has developed a streamlined LBR 9013 process in CM/ECF to make filing the motion and getting the order nearly pain-free.

Procedures for Motions for § 522(q)(1) Orders

CM/ECF will generate all required documents – **do not** create any yourself! **After** the completion of plan payments and after filing the Certification about a Financial Management Course (Official Form 423) and the Domestic Support Obligation Certificate, file the motion as follows:

1. In CM/ECF, select Bankruptcy > LBR 9013 > 9013 Motions with Notice > 522(q)(1) Order.
2. Enter case number; select the debtor(s) as Party.
3. Ensure “Yes” is selected for “Assign a document number?”
4. Enter Hearing date, time, location, and Response due date (see 9013 Motion Procedures on page 2 of this Handbook).
5. Do not refer the motion to existing events, and do not enter mailing date for Certificate of Service (the court will notice this motion).
6. Verify docket text and submit.

Important Note: The email Notice of Electronic Filing you receive and the case's docket report will display a link to the motion. These links may not display the document until one business day later when the CM/ECF creates the motion for BNC transmission.

If objections are received, a hearing will be scheduled. If no objections are received, the court will enter the necessary § 522(q)(1) Order when the case is otherwise ready for discharge.

Transfers/Assignments of Claims

The Transfer of Claims process is governed by paragraph (e) of Rule 3001 of the Federal Rules of Bankruptcy Procedure, as follows:

- (e)(1) is for transferring claims for other than security before the original claim is filed with the court (*file a claim, not a transfer*);
- (e)(2) covers transferring claims for other than security (the most common);
- (e)(3) is for transferring claims for security before an original claim is filed (*file a claim, not a transfer*);
- (e)(4) covers transferring claims for security after the original claim is filed; and
- (e)(5) contains provisions for objections and hearings on objections.

Procedures for Transferring/Assigning a Claim

The Transferee should take the following steps:

1. Ensure the claim being transferred appears on the Claims Register for the case. If it does not appear, file a claim (not a transfer) after the transfer is consummated under non-bankruptcy law, per Rule 3001(e)(1) or (3).
2. In CM/ECF, select Bankruptcy > Claims > Claims Actions > [enter case number] > Transfer of Claim.
3. If registered in CM/ECF as a “Creditor,” skip the “Select any additional attorney(s)” screen by selecting Next.
4. Select or Add/Create the party you represent. Ensure you select “Creditor” for “Role.”
5. Attach your Assignment of Claim.
6. Select the appropriate sub-paragraph of Rule 3001 governing the transfer. (See above and the rule for clarification.)
7. Complete the text box information for Claim #(s), Transferor’s name, and Transferee’s name, and verify the docket text for your filing.

If your Transfer documents include a Waiver of Notice from the Transferor, the Transferee will be substituted as the Claimant in the claims register. Absent a waiver, the Clerk will serve notice of this proposed transfer to the Transferor. If no objections are filed within 21 days, the Transferee will then be substituted as the Claimant in the claims register for the case.

Miscellany

Here is a series of unrelated pointers added at the request of several court employees when asked if they had anything to add to a handbook covering a few limited motions. Responses were largely prefaced with, “not on those subjects, but could you mention” Some of these pointers are outside the scope of Motion Practice, but are included in the hope they prove helpful.

- Except for the B121, **redact** the first 5-digits of any **Social Security Numbers** in your docs.
- **Remanding** matters from state court is done by opening an Adversary Proceeding and selecting “2. Removed From Non-Bk Court” as the Origin. It is a state court lawsuit becoming a bankruptcy court lawsuit – an AP.
- If filing an **Expedited Complaint for Turnover in a Chapter 13**, be sure to select “n” for Complaint on the second page of the Open Adversary Case screens.
- **Motions for Contempt** and **Motions for Sanctions** are not 9013 Motions.
- **Motions to Reconsider** are not 9013 Motions. The exception is a Motion to Reconsider an Order Allowing or Disallowing a Claim under FED. R. BANKR. P. 3008.
- The CM/ECF item “Motions > Other Motions/Applications > **Generic Application**” is provided for those rare, completely unique motions which are not in our events dictionary. Before choosing Generic Application, please use the **Search** feature in ECF on the Bankruptcy and Adversary screens to see if we have a CM/ECF filing event available to fit your needs.
- When opening an Adversary Proceeding and entering “**Plaintiff Information**,” be sure to select the box “**Attorney...**” and add the attorney registered to receive notice. Although the plaintiff attorney’s office is logged onto CM/ECF and filing the complaint, this function adds the attorney to the case for purposes of receiving electronic notices.
- The following documents should be **filed separately** from the Petition:
 - *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B)
 - *Application for Individuals to Pay Filing Fee in Installments* (Official Form 103A)
 - *Certificate of Credit Counseling*
 - *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1 Supp.)
 - *Certification of Exigent Circumstances regarding credit counseling*
 - *Statement About Your Social Security Numbers* (a private event) (Official Form 121)
 - *Chapter 7 Statement of Your Current Monthly* (Official Form 122A-1)
 - *Chapter 7 Means Test Calculation* (Official Form 122A-2)
 - *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122-B)
 - *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1)
 - *Chapter 13 Plan* (Local Form, Appendix D)

- *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (pro se case only) (Bankruptcy Form B 2010)