

## **N.D.W.V. LBR 9013-1**

### **Motion Practice.**

#### **(a) Motion and Application Practice in the Main Bankruptcy Case.**

Motion and application practice in the main bankruptcy case are governed principally by Rules 5 and 7 of the Federal Rules of Civil Procedure and, among others, Rule 9013 of the Bankruptcy Rules. Particular attention should be paid to the notice / service provisions required by law.

#### **(b) Motion and Application Practice in Adversary Proceedings.**

Motion and application practice in adversary proceedings are governed principally by Rules 5 and 7 of the Federal Rules of Civil Procedure and the comparable Rules 7005 and 7007 of the Bankruptcy Rules.

#### **(c) Papers to Accompany Motions and Applications.**

Each motion or application shall be accompanied, when appropriate, by the following papers or their electronic equivalents:

1. Order — In appropriate circumstances, a proposed form of order which, if entered by the Court, would grant the relief sought by the motion. Such orders should not bear the engraved or printed firm name;

2. Notice

- A. Telephonic - sets forth with particularity the nature of the pleading and relief sought and which provides that: "...a telephonic hearing with the Court will be initiated by the Movant at \_\_\_\_\_ o'clock, \_\_\_\_ .m., on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_." (See Appendix G-1) The movant or applicant may obtain

a time and date from the Court Clerk prior to preparing the notice and submit the completed notice for service by the Clerk; or,

B. Negative notice - sets forth with particularity the nature of the pleading and relief sought and which provides that: "...an order may be entered granting the relief sought unless a specific written objection is filed within \_\_\_\_ (\_\_) days of the date of the mailing of this notice" (See Appendix G-2)

C. The Clerk's Office generates most notices of hearing on routine motions and applications. However, a movant must prepare a notice for the following:

(1.) Motion to Compromise - twenty (20) day negative notice [See Bankruptcy Rule 2002(a); N.D.W.V. LBR 9019-1]

(2.) Proposed Use, Sale or Lease of Property - twenty (20) day negative notice [See Bankruptcy Rules 2002(a), 2002(c)]

(3.) Motion to Sell Free and Clear of Liens and Other Interests Pursuant to Bankruptcy Rule 6004(c) - Twenty (20) day negative notice [See Bankruptcy Rule 2002(c)]

(4.) Motion for Redemption - Twenty (20) day negative notice. [See N.D.W.V. LBR 6008-1]

(5.) Motion to Avoid Lien - Twenty (20) day negative notice. [See N.D.W.V. LBR 4003-2]

(6.) Motion to Reopen [See N.D.W.V. LBR 5010-1; Appendix O]

3. Certificate of Service — The notice provisions of the Federal Rules of Civil Procedure, the Bankruptcy Rules and these Local Rules are neither intended to supersede, nor to be a substitute for, the requirement that pleadings and orders be served upon the interested

parties, provided that if the entire creditor body is served, the certificate of service may recite service on “...all creditors listed on the mailing matrix on file in the Bankruptcy Clerk’s Office as of (date).”. A certificate of service shall be utilized when required. (See N.D.W.V. LBR 5005-4.10 re: electronic service)

Cross Reference

Rule 5 Fed. R. Civ. Pro.  
Rule 7 Fed. R. Civ. Pro.  
Bankruptcy Rule 2002  
Bankruptcy Rule 9013  
Bankruptcy Rule 7005  
Bankruptcy Rule 7007  
N.D.W.V. LBR Part IX; See also Part V (Electronic)  
Appendices G, O