

DRAFT
10/22/14

**PRACTICE TIPS FOR OREGON LOCAL BANKRUPTCY RULES
AND LOCAL BANKRUPTCY FORMS**

Prepared by the Oregon State Bar Debtor-Creditor Section
Local Bankruptcy Rules and Forms Committee

Last updated ____, 2014

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Introduction

The Local Bankruptcy Rules and Forms Committee of the Oregon State Bar Debtor-Creditor Section has prepared the following practice tips as supplemental information and context for the LBRs and LBFs. The tips are not themselves LBRs or necessarily the views of the judges, and users should consult relevant statutes, rules and case law. Where helpful, tips are preceded by relevant selections of the LBR or LBF to which the tip relates.

Rule 2016-1. Compensation for Services Rendered & Reimbursement of Expenses.

...

(h) Secured Creditor Expenses. In this subdivision the term “expense” includes the costs of insurance, taxes paid, attorney fees, appraisal fees, and inspection fees.

...

(2) Chapter 12 or 13.

(A) Inclusion of Expenses in Proof of Claim. A secured creditor who requests payment of expenses by the trustee must also:

...

(iv) Postconfirmation. No later than the 90th day before the debtor is scheduled to make the final plan payment, file an initial or amended proof of claim that clearly identifies the requested expenses incurred after plan confirmation. If the creditor incurs the requested expense in connection with a claim described in FRBP 3002.1(a), the creditor must also comply with FRBP 3002.1.

...

(B) Disclosure of Preservation of Expenses Claim After Discharge. A creditor that asserts a right to expenses as part of its secured claim, but does not request payment of those expenses by the trustee, must disclose its claimed entitlement to payment of the expenses either by filing and serving on the debtor a notice of the expense claim, or by including the expense claim in the creditor’s proof of claim. A secured creditor may elect to include some expenses in its proof of claim, and other expenses in a notice.

...

- (ii) **Deadline to Give Notice.** A creditor that asserts a claim for prepetition expenses must give notice of its claim by the deadline for that creditor to file a proof of claim. A creditor that asserts a claim for postpetition expenses must make its disclosure not later than the 90th day before the debtor is scheduled to make the final plan payment. If the creditor incurs the postpetition expense in connection with a claim described in FRBP 3002.1(a), the creditor must also comply with FRBP 3002.1.

* * *

Practice tip. A secured creditor holding a claim described in FRBP 3002.1(a)—one secured by a security interest in a chapter 13 debtor’s principal residence for which provision is made in the debtor’s plan—should take care to comply with both LBR 2016-1(h)(2) and FRBP 3002.1. For example, if a chapter 13 debtor with a confirmed plan fails to make a monthly payment on a principal-residence secured debt treated as such by the plan 11 months before the final scheduled plan payment and the creditor’s attorney spends time responding to the plan-payment default, the creditor might read LBR 2016-1(h)(2)(A)(iv) to entitle the creditor to payment of the attorney fee from the trustee if the creditor only amends its previously filed proof of claim before 90 days before the final scheduled plan payment. And the creditor might read LBR 2016-1(h)(2)(B)(ii) to permit it to preserve its right to collect the attorney fee after discharge by giving notice before the 90th day before the final scheduled plan payment. But, under those facts, both of those readings are incorrect in view of FRBP 3002.1(c), which requires the creditor to notice the attorney fee within 180 days after incurring it.

Rule 3007-1. Claim—Objection.

* * *

Practice tip. As of December 1, 2014, LBR #763 (formerly numbered LBF #763.2), the Oregon claim-objection form, includes under part 2 (objection bases) a checkbox stating “Proof of claim does not include documentation required by FRBP 3001(c) and (d) (e.g., a copy of the note, or documents establishing secured status),” and it includes under part 3 (proposed treatment of claim) a checkbox stating “(If objection is based on failure to provide documentation) Disallowed for distribution: If an amended claim including the required documentation is not filed within 30 days of the filed date noted above, no distribution on account of the claim will be made by the trustee or debtor.” Although FRBP 3001(c) requires that certain documents be attached to a proof of claim, a court may not disallow a claim solely because the claimant failed to attach the required documents. *In re Heath*, 331 B.R. 424 (9th Cir. B.A.P. 2005); *see also In re Campbell*, 336 B.R. 430, 432 (9th Cir. B.A.P. 2005) (claim objection that does not actually contest debtor’s liability or amount of debt is insufficient to disallow proof of claim, even if claim lacks required documentation). But dictum in *Heath* suggests that the creditor’s failure to attach required documents can continue to be a basis, if not the only basis,

for a claim objection. In *Heath*, the B.A.P. stated that “we would be faced with a very different case if, for example, Debtors’ objections stated that they had written to a Creditor explaining that they questioned specific charges, or that during the slide into bankruptcy they had not reviewed or retained their monthly statements, and therefore they wanted the past twelve months’ credit card statements to verify the Creditor’s calculation of principal, interest, and other charges.” 331 B.R. at 437. After that statement, the B.A.P. quoted with approval from *In re Shank*, 315 B.R. 799, 801 (N.D. Ga. 2004), where the bankruptcy court explained that, “[i]f the debtor requires documentation to make a good faith inquiry into the existence or amount of any liability and a claimant refuses a legitimate request to produce it, an objection that asserts [the debtor’s] good faith challenge and requests disallowance of the claim due to inadequate documentation would be appropriate and could well result in entry of an order disallowing the claim or requiring its amendment . . .” But if the debtor concedes that the debtor owes some amount to the creditor, “the proper objection is that the claimant has not established anything in excess of the amount that the debtor admits is owed.” *Id.* In a nonprecedential memorandum decision, *Sierra v. Hoskins*, 530 Fed. Appx. 619, 620 (June 20, 2013), the Ninth Circuit Court of Appeals cited to the *Heath* dictum to support affirming a bankruptcy court’s disallowance of a proof of claim because the claimant “failed to support the claim.” In view of *Heath* and *Campbell*, it would be advisable not to rely on the claimant’s failure to attached to the claim documentation required by FRBP 3001 as the sole basis for a claim objection. Instead, such an objection should also demonstrate the following: (1) the good-faith basis for the objection to allowance of the claim (other than the absence of supporting documentation), (2) the manner in which the debtor scheduled the claim, including on which schedule the claim is listed, the name, address, and account number (last four digits) of the claimant or the assignor of the claim to the claimant, whether the claim is scheduled as disputed, contingent, or unliquidated, the scheduled claim amount, and an explanation of any difference between the manner in which the claim was scheduled and the objector’s proposed treatment of the claim, (3) the date and substance of the objector’s request to the claimant for documentation, including the address to which the request was sent, the date by which the objector requested the documentation, and a list of the requested documentation, and (4) the objector’s need for the requested documentation to make a good-faith inquiry into the claim’s allowance or amount.

LBF #763. Objection to Claim, and Order and Notice Thereon

....

2. The undersigned objects to such claim on the ground(s) it (check all applicable sections):

....

___ Proof of claim does not include documentation required by FRBP 3001(c) and (d) (e.g., a copy of the note, or documents establishing secured status).

....

3. The undersigned recommends said claim be (check applicable box(es)):

___ (If objection is based on failure to provide documentation) Disallowed for distribution: If an amended claim including the required documentation is not filed within 30 days of the filed date noted above, no distribution on account of the claim will be made by the trustee or debtor.

* * *

See practice tip for LBR 3007-1.

Each LBR Using the Term “Serve”

Practice tip. Serve a document under FRBP 7004 or FRCP 5(b) (applicable through FRBP 7005 or 9014(b)) if required to do so by either of those rules or expressly required to do so by any LBR. If an LBR requires that a document be served but does not expressly require that it be served under FRBP 7004 or FRCP 5(b), determine whether service under either of those rules is required on some basis other than the language of an LBR. For example,

- LBR 6006-1(b) requires that a chapter 12 or 13 plan must be served under FRBP 7004 on all parties to a contract or lease to be assumed, rejected, or assigned in the plan.
- LBR 1017-1 requires that, unless a motion to convert a case has been filed by a debtor having a statutory right to convert, the motion must be served on the debtor and any committee, and FRBP 1017(f)(2) requires that conversion under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(b) must be on motion filed and served as required by FRBP 9013. Under FRBP 9014(b), a motion must be served under FRBP 7004. Thus, even though LBR 1017-1 is silent regarding the manner of service, the combined effect of LBR 1017(f)(2) and FRBPs 1017(f)(2), 9013, and 9014(b) is that the motion to convert must be served on the debtor and the committee in the manner required by FRBP 7004.
- LBR 2002-1(a)(2) requires that an entity other than a trustee requesting relief must serve all notices required under FRBP 2002(a)(2)-(4). FRBP 2002(a) requires that notices be given by mail, and FRBP 2002(g) specifies the manner in which notices must be addressed. Notices given under FRBP 2002 are not motions and do not initiate contested matters. Thus, LBR 2002-1(a)(2) does not require service under FRBP 7004.