

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

IMPORTANT NOTICE TO THE BAR AND PUBLIC

**THIRTY-DAY PUBLIC COMMENT PERIOD
CONCERNING NEW AND AMENDED
2023 LOCAL BANKRUPTCY RULES AND FORMS**

Please be advised that the Board of Judges of the United States Bankruptcy Court for the District of New Jersey has approved for publication for a thirty-day public comment period, a draft of proposed 2023 new and amended Local Bankruptcy Rules and a new local form as highlighted below:

PROPOSED LOCAL BANKRUPTCY RULES AND FORM

D.N.J. LBR 1016-1. Death or Finding of Incompetency of a Debtor

- *Notice of Death or Finding of Incompetency of a Debtor*

D.N.J. LBR 1020-1. Subchapter V Designation

D.N.J. LBR 3022-1. Closing a Chapter 11 Case

D.N.J. LBR 7055-1. Default; Default Judgment

D.N.J. LBR 9013-3. Motions: Hearing

The proposed Local Bankruptcy Rules and new local form are attached for ease of reference.

IMPORTANT DATES

Dates for public comment and implementation are set forth as follows:

- April 6, 2023 - Publication of draft rules for public comment.
- May 8, 2023 - Close of public comment period.
- May 9, 2023 - Consideration of comments received by the Board of Judges of the Bankruptcy Court for the District of New Jersey.
- May 23 - June 30, 2023 - Submission of draft rules for formal approval by the Board of Judges of the District Court for the District of New Jersey.
- August 1, 2023 - Effective date of 2023 Local Bankruptcy Rules.

By approving a publication draft, the Board of Judges solicits comments from bankruptcy professionals and members of the public.

Comments may be submitted to the Court email address: local_rules@njb.uscourts.gov.

Dated: April 6, 2023

Jeanne A. Naughton, Clerk

D.N.J. LBR 1016-1. Death or Finding of Incompetency of a Debtor

Within 30 days of learning of (i) the death, or (ii) a finding of incompetency of a debtor through appropriate legal process, debtor's counsel must file Local Form *Notice of Death or Finding of Incompetency of a Debtor*. In the case of a self-represented debtor, any person who becomes aware of a debtor's death or incompetency may also file said Local Form. Any relief related to the death or incompetency of a debtor must be requested by separate motion.

2023 Comment

This Rule is new. It is meant to facilitate notice to the court upon the death or finding of incompetency of a debtor.

UNITED STATES BANKRUPTCY COURT
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Caption in Compliance with D.N.J. LBR 9004-1(b)

In Re:

Case No.: _____

Chapter: _____

Judge: _____

**NOTICE OF DEATH OR
FINDING OF INCOMPETENCY OF A DEBTOR**

I, _____, am the

Executor (select if appointed by a will)

Administrator (select if no will and appointed by a probate court)

of the estate of _____ (name of debtor),

Other (identify relationship to debtor) _____,

and hereby certify as follows:

1. Debtor, _____ (name of debtor),

died on _____ (date).

was declared legally incompetent on _____ (date) by _____
_____ (insert appropriate court).

2. The debtor's legal representative is _____

_____ (if known, include title and contact information).

3. I do / do not have knowledge of the debtor's assets and liabilities, and financial aspects of the debtor's estate.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, then I am subject to punishment.

Dated: _____

Signature: _____

Print name: _____

Address: _____

Filed by: _____

Attorney/Other

D.N.J. LBR 1020-1. Subchapter V Designation

(a) Designation within 14 days after filing. A debtor that did not elect in the original petition to have subchapter V of chapter 11 apply, may make the election by filing an amended petition within 14 days of the date of filing, or in an involuntary petition, file a statement within 14 days of the order for relief. All subchapter V deadlines will run from the date of the filing of the original petition or the order for relief.

(b) Designation after 14 days. After the initial 14-day period, a debtor must file a motion seeking permission to have subchapter V of chapter 11 apply. Any request for an extension of the subchapter V deadlines must be part of the motion and the motion must be served on the parties designated in Bankruptcy Rule 1020(c).

2023 Comment

This Rule is new. It addresses the procedures for opting for subchapter V after the petition has been filed or an order for relief has been entered. The debtor must promptly email chambers to inform the assigned judge of either (i) the amended petition, or (ii) in an involuntary case, a statement consistent with Federal Rule of Bankruptcy Procedure 1020(a), so that the correct deadlines may be set in the case. Failure of the debtor to ensure that the deadlines are updated on the court's docket does not excuse compliance with the deadlines in subchapter V.

D.N.J. LBR 3022-1. Closing a Chapter 11 Case

(a) Closing case. Except in the case of a plan confirmed under § 1191(b) of the Code, the court will close a chapter 11 case 180 days after entry of the order confirming the plan.

(b) Cases under § 1191(b) of the Code. In a case confirmed under § 1191(b) of the Code, the Court will close the case if the trustee has filed the Chapter 11 Subchapter V Trustee's Final Report and Account, and if within 30 days no objection has been filed by the United States Trustee or a party in interest.

(c) Extension. On motion of a party in interest filed before the case is closed, the court may extend the time for closing the case.

2023 Comment

If an objection is filed by a party in response to a *Notice of Intention to Close the Case Pursuant to D.N.J. LBR 3022-1(a)* opposing closure and requesting that the case remain open, such party is not required to file a separate motion for an extension pursuant to D.N.J. LBR 3022-1(c).

2021 Comment

Subdivision (a) is amended and Subdivision (b) is new due to the enactment of the Small Business Reorganization Act of 2019.

2015 Comment

The changes to this Rule are stylistic.

D.N.J. LBR 7055-1. Default; Default Judgment

(a) Entering a Default. A party requesting entry of default must file:

- (1) a request for entry of default;
- (2) a certification stating that:
 - (A) the party against whom default is sought was properly served with the summons and complaint;
 - (B) the party has failed to plead or otherwise defend within the allowed time; and
 - (C) the party has not requested or the party has not been granted an extension of time to plead or otherwise defend; and
- (3) Local Form *Entry of Default*.

(b) Entering a Default Judgment under Federal Rule 55(b)(1). A party requesting entry of default judgment under Federal Rule 55(b)(1) must file:

- (1) a request for entry of default judgment;
- (2) a certification that includes:
 - (A) a statement regarding the defendant's military status in compliance with 50 U.S.C. § 3931; and
 - (B) a statement that the defendant is not a minor or incompetent person, unless represented by a fiduciary who has appeared; and
- (3) Local Form *Default Judgment for a Sum Certain*.

(c) Entering a Default Judgment under Federal Rule 55(b)(2). A party applying for entry of default judgment under Federal Rule 55(b)(2) must file:

- (1) a request for entry of default judgment;
- (2) a certification that includes:
 - (A) facts supporting at least one cause of action asserted in the party's pleading;
 - (B) a statement regarding the defendant's military status in compliance with 50 U.S.C. § 3931; and

(C) a statement that the defendant is not a minor or incompetent person, unless represented by a fiduciary who has appeared;

(3) any documentary evidence;

(4) a memorandum of law or a statement why no memorandum of law is necessary; and

(5) a proposed judgment.

(d) Proof Hearing. The court will schedule a proof hearing if necessary.

2023 Comment

This Rule is amended to update the citation to 50 App. U.S.C. § 521 of the Servicemembers Civil Relief Act. That section is now codified at 50 U.S.C. § 3931.

2015 Comment

This Rule has been amended to clarify that a party seeking entry of default or default judgment need file only a request, not a motion.

D.N.J. LBR 9013-3. Motions: Hearing

(a) Duty to confer on opposed motion. If opposition to a motion is filed, the parties must confer before the hearing to determine whether the issue can be resolved.

(b) Duty to report settlement or withdrawal of motion. If the parties settle a motion, or the movant withdraws a motion, the movant must immediately notify chambers and file Local Form *Status Change Form*.

(c) Telephonic appearance. Each judge's policy regarding appearance by telephone is available on the court's website.

(d) Oral argument.

(1) Uncontested motions. All motions will be decided without oral argument unless opposition is filed.

(2) Contested motions. The court will permit oral argument from only the movant or a party that has filed opposition to a motion. The court retains discretion to decide contested motions without oral argument.

(e) Oral testimony. A party may not, without prior court authorization, present oral testimony at a hearing on a motion, except for a motion under § 363(b), (c), (f), or § 364 of the Code.

2023 Comment

Subdivision (d) has been amended to emphasize that, for contested motions, the court may not require oral argument.

2015 Comment

This Rule is new. It is derived from former Local Bankruptcy Rule 9013-1.

An appearance is permitted, but not required, on an unopposed motion. On an opposed motion, a party may choose not to appear and rely on its papers, but the party must inform chambers.

Except as provided in subdivision (e), and consistent with Local Bankruptcy Rule 9013-1(a)(2), factual evidence in support of a motion must be presented through the certification of a person with personal knowledge.

Local Bankruptcy Rule 9021-1 addresses consent orders.

Local Bankruptcy Rule 5071-1 addresses a request for an adjournment.