

2-11-2020

Clerk, U.S. Bankruptcy Court
District of Montana
Butte Division**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**ADOPTION OF LOCAL BANKRUPTCY
RULES AND PROCEDURES TO
IMPLEMENT THE SMALL BUSINESS
REORGANIZATION ACT OF 2019****GENERAL ORDER NO. 2020-3-BPH****ORDER**

On August 23, 2019, the Small Business Reorganization Act of 2019 (the SBRA) was enacted into law. The SBRA makes many substantive and procedural changes to the Bankruptcy Code and requires changes to the Federal Rules of Bankruptcy Procedure (“Interim Rules”) to implement those changes. By General Order 2020-2-BPH, this Court adopted Interim Rules.¹

Along with changes to the Interim Rules, additional changes to this Court’s Local Bankruptcy Rules may be necessary for implementation. However, the February 19, 2020 effective date of the SBRA occurs before the Local Bankruptcy Rules can be evaluated or amended. To assist practitioner’s this Court has adopted procedures and rules for any gap period that exists between February 19, 2019, and any future amendment of the LBRs, the following procedures and local practices are applicable in cases in which a debtor makes the subchapter V election permitted under SBRA:

Proof of Claim filing deadline in a Subchapter V, Chapter 11 Case.

The last day to file proofs of claim in a small business, subchapter V, chapter 11 case shall be seventy (70) days after the date of the order for relief. A claim of a governmental unit shall be

¹ The Executive Committee of the Judicial Conference, acting on an expedited basis on behalf of the Judicial Conference, approved the Interim Rules for distribution to the courts.

filed before one hundred eighty (180) days after the date of the order for relief, except as otherwise provided in the Federal Rules of Bankruptcy Procedure. The clerk shall notify all creditors and parties in interest of such bar date.

Election under § 1111(b) by Secured Creditor in a Subchapter V, Chapter 11 Case.

In all small business, subchapter V, chapter 11 cases, an election of application of 11 U.S.C. § 1111(b)(2) by a class of secured creditors shall be made no later than 14 days following the filing of debtor's initial plan of reorganization under 11 U.S.C. § 1189, or within such other time as the court may fix.

Attached as "Appendix A" is a copy of an initial Order that the Court will enter after a debtor files a petition that includes the subchapter V election permitted under SBRA.

IT IS ORDERED.

DATED this 11th day of February 2020.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

APPENDIX A¹

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

DEBTOR'S NAME,

Debtor.

Case No. 20-20001-BPH

**ORDER SETTING (A) STATUS CONFERENCE; (B) CLAIMS BAR DATE;
(C) DEADLINE FOR ELECTION UNDER 11 U.S.C. § 1111(b)(2); AND (D)
OTHER DEADLINES IN CHAPTER 11 CASE COMMENCED UNDER
SUBCHAPTER V OF CHAPTER 11**

At Butte in said District this 2nd day of February, 2020.

In accordance with Subchapter V of Chapter 11 of Title 11² of the United States Code, the Court **ORDERS** as follows:

1. The Court will convene a telephonic status conference on _____.³

To participate in the telephonic conference, the parties shall, on the aforementioned date and time, dial into the Court's telephonic conferencing system at 858-812-0972; the Numeric Access Code for the conference is 3000000# followed by 3100566#. Debtor, Debtor's counsel, and the Trustee shall appear and participate in the telephonic status conference. Creditors are

¹ *Italicized language in this Appendix A are explanatory comments and will not appear in the actual Order entered by the Court. Further, the explanatory comments are no substitute for reading the Bankruptcy Code.*

² *Interim Rule 1020(a) provides that Debtor that the debtor state in the petition whether the debtor elects application of subchapter V and provides that the case proceed in accordance with the election unless the court determines that it is incorrect. In an involuntary case, the debtor must state whether it is a small business debtor and make the election within 14 days after the order for relief. Interim Rule 1020(b) requires an objection to a debtor's statement regarding the election within 30 days after the conclusion of the § 341(a) meeting.*

³ *Not later than 60 days after the entry of the order for relief the status conference shall be held. 11 U.S.C. § 1188(a). At this hearing, the Court expects Debtor and Debtor's counsel to outline the steps Debtor intends to take following the conference to "further the expeditious and economical resolution of the case." Id.*

strongly encouraged to participate in the telephonic conference. A parties' failure to participate in the telephonic status conference will cause the Court to question their good faith and commitment to this process.

2. At least 14 days prior to the date of the foregoing status conference, Debtor shall file the report required by 11 U.S.C. § 1188(c) and shall serve that report on the case or standing trustee, the United States Trustee, and all parties-in-interest.⁴

3. Within 14 days following entry of the order for relief, Debtor shall serve notice of the commencement of this case to any entity known to be holding money or property subject to withdrawal or order of the Debtor. Fed. R. Bankr. P. 2015(a)(4).

4. Not later than 90 days following entry of the order for relief, Debtor shall file and serve a plan. 11 U.S.C. § 1189(b). Such plan shall conform to the requirements of 11 U.S.C. §§ 1190 and 1191, along with the applicable provisions of 11 U.S.C. §§ 1123 and 1129. Unless otherwise ordered in specific cases, use of Official Form 425 is mandatory in this district.⁵

5. The court expects compliance with 11 U.S.C. §§ 1187(a), 1116(1)(A), and 1116(1)(B), which require a Debtor in a voluntary case filed under Subchapter V of Title 11 to file and serve the following documents with the petition for relief:

- a. Debtor's most recent balance sheet;
- b. Debtor's most recent statement of operations;
- c. Debtor's cash-flow statement; and
- d. Debtor's most recent federal income tax return.

⁴ *The report shall detail "the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization." 11 U.S.C. § 1188(c).*

⁵ *Subject to any future deliberations by the practitioners and Local Rules Committee the Court will revisit whether use of Official Form 425 is mandatory. Further, and important, a debtor does not have to file a disclosure statement in a subchapter V case, unless the Court orders otherwise. 11 U.S.C. § 1181(b).*

If Debtor has not prepared one or more of the foregoing documents or, in the case of a federal income tax return, has not filed such a return, then in lieu of such document(s) and/or return, 11 U.S.C. §§ 1187(a), 1116(1)(A), and 1116(1)(B) require the Debtor to file with the petition for relief a declaration attesting to that fact under penalty of perjury.

6. Any secured creditor that wishes to make an election under 11 U.S.C. § 1111(b)(2) shall do so no later than 14 days following the filing of the plan.

7. Except as provided in Fed. R. Bankr. P. 3002(c), creditors other than governmental units shall file proof of their claim or interest not later than 70 days following entry of the order for relief. 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c)(1) shall govern the timing of the filing of proof of claims by governmental units.

8. Within 14 days following substantial consummation of any confirmed plan, Debtor shall file, and shall serve on the case or standing trustee, the United States Trustee, and all parties in interest a notice of substantial consummation. 11 U.S.C. § 1183(c)(2).

9. If this case was commenced with the filing of an involuntary petition, then Debtor shall:

a. comply with Fed. R. Bankr. P. 1007(d) within 2 days following entry of the order for relief;

b. comply with Fed. R. Bankr. P. 1007(a)(2) within 7 days following entry of the order for relief;

c. comply with 11 U.S.C. §§ 1187(a), 1116(1)(A), and 1116(1)(B) within 7 days following entry of the order for relief by filing the following documents:

- i. Debtor's most recent balance sheet;
- ii. Debtor's statement of operations;
- iii. Debtor's cash-flow statement; and
- iv. Debtor's most recent federal income tax return.

If Debtor has not prepared one or more of the foregoing documents or, in the case of a federal income tax return, has not filed such a return, then in lieu of such

document(s) and/or return, Debtor shall file and serve within 7 days following entry of the order for relief a declaration attesting to that fact under penalty of perjury; and,

d. comply with Fed. R. Bankr. P. 1020(a) and 1007(c) within 14 days following entry of the order for relief.

10. Failure to comply with this order may result in the imposition of sanctions against Debtor or Debtor's counsel. In the court's discretion, these sanctions might include, but are not limited to, conversion or dismissal of this case, and/or monetary sanctions.

11. Following the filing of the plan the Court will enter a separate Order establishing procedures for serving a copy of the Plan, a form ballot, setting a hearing date and objection deadline.