

Rule 7026-1

DISCOVERY – GENERAL

(a) **General.** Local Rule 7001-1 addresses numerous discovery issues in adversary proceedings and, if ordered by the Court, in complex contested matters.

(b) **Contested Matters.** Unless otherwise ordered by the Court, the disclosure requirements of Fed. R. Civ. P. 26(a) and the conference and reporting requirements of Fed. R. Civ. P. 26(f) do not apply in contested matters. Unless the Court orders otherwise, the parties may commence discovery immediately after service of the paper initiating the contested matter is effected under Fed. R. Bankr. P. 7004.

(c) **Discovery Papers Shall Not Be Filed With the Court.** Consistent with Fed. R. Civ. P. 5, incorporated by Fed. R. Bankr. P. 7005, the parties' written disclosures under Fed. R. Civ. P. 26(a)(1) and (2) and the following discovery responses and requests shall not be filed with the Court until they are used in the case or proceeding or the Court orders their filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admissions.

(d) **Parties Shall Meet and Confer Prior to Filing Discovery Motions.** Motions to compel and motions for protective order shall include a certification that the movant has in good faith conferred with the opposing party in an effort to resolve the issue without Court action.

Notes of Advisory Committee

2017 Amendment

This amendment adds new sections (c) and (d). This amendment to the rule is effective July 1, 2017.

2016 Amendment

This amendment refers parties, in section (a), to Local Rule 7001-1 Adversary Proceedings – Procedures for issues relating to discovery. The amendment also clarifies that, absent order of the Court otherwise, the conference and reporting requirements of Fed. R. Civ. P. 26 do not apply to contested matters. Former section (c) regarding the depositions of non-resident parties has migrated to Rule 7030-1 Depositions upon Oral Examination. This amendment to the rule is effective July 1, 2016.

2004 Amendment

This amendment corrects the Bankruptcy Rules citation to that of the currently used citation.

2000 Amendment

This amendment is made necessary by the December 1, 2000, amendments to the Federal Rules of Civil Procedure.

Under Fed. R. Bankr. P. 7026, Fed. R. Civ. P. 26 applies in adversary proceedings. Under Fed. R. Bankr. P. 9014, Fed. R. Bankr. P. 7026 also applies in contested matters. Fed. R. Bankr. P. 9029(a)(1) further provides that the Court's local rules may not be inconsistent with the Federal Rules of Bankruptcy Procedure.

The December 1, 2000, amendments to Fed. R. Civ. P. 26 eliminate the provisions of that rule that permit courts to "opt out" of certain of its provisions that became effective on December 1, 1993. The Court is required, therefore, to rescind the provisions of its local rules by which it "opted out" of the mandatory disclosure and conference requirements contained in Fed. R. Civ. P. 26(a)(1)-(3) and (f). These "opt out" provisions are presently contained in paragraphs (a) and (b) of this Local Rule. Because of these required rescissions, the Court is also required to rescind the initiation of discovery provisions contained in paragraph (c) of this Local Rule.

As a consequence of this amendment, the provisions of Fed. R. Civ. P. 26 are fully applicable in adversary proceedings in the Court, although the terms of the rule set forth circumstances in which the parties may stipulate or the Court may order variations in individual cases. The Court may not do so, however, by local rule or standing order. Thus, the disclosures required by Fed. R. Civ. P. 26(a)(1) through (3) are generally applicable in adversary proceedings; the parties must meet as required by Fed. R. Civ. P. 26(f); and, pursuant to Fed. R. Civ. P. 26(d), the parties may not seek discovery before the parties have conferred as required by Fed. R. Civ. P. 26(f).

Pursuant to Fed. R. Bankr. P. 7005 and Fed. R. Civ. P. 5(d), the parties may not file with the Court the disclosures required by Fed. R. Civ. P. 26(a)(1) and (2) until they are used in the proceeding. The parties must file, however, the disclosures required by Fed. R. Civ. P. 26(a)(3).

Pursuant to Fed. R. Bankr. P. 9014, Fed. R. Bankr. P. 7026 applies in contested matters "unless the court otherwise directs." Thus, the Court retains the ability to direct by local rule that only portions of Fed. R. Bankr. P. 7026 apply in contested matters. The Court has therefore contemporaneously promulgated new Local Rule 9014-2 that applies Fed. R. Bankr. P. 7026 to contested matters only to the extent permitted before this amendment to this Local Rule. Under Local Rule 9014-2, therefore, the mandatory disclosure provisions of Fed. R. Civ. P. 26(a)(1)-(3) do not apply in contested matters, the parties are not required to confer as set forth in Fed. R. Civ. P. 26(f), and the parties may immediately seek discovery. Of course, the Court may direct the application of these Rule 26 provisions by specific order, and the parties may agree that they apply.

“If necessary to comply with [the Court’s] expedited schedule for Rule 16(b) conferences,” Fed. R. Civ. P. 26(f) does permit the Court to make local rules as to certain matters related to the Rule 26(f) conference and the discovery plan. Unlike the timing and pace of litigation in civil actions in the district court, litigation in adversary proceedings in the bankruptcy court is handled on an expedited basis. In the new provisions of this Local Rule appearing as new paragraphs (a) and (b), therefore, the Court exercises this discretion in the manner the Committee believes is appropriate. The Court, of course, can vary these times by individual order.

The last paragraph of this Local Rule is re-lettered to reflect the rescission of old paragraphs (a) through (c) and the substitution of new paragraphs (a) and (b).

This amendment to the rule was effective on December 1, 2000.

1997 Amendment

This amendment conforms the existing Local Rules to the uniform numbering system prescribed by the Judicial Conference of the United States and to the model system suggested and approved by the Advisory Committee on Bankruptcy Rules of the Judicial Conference’s Committee on Rules of Practice and Procedure. In renumbering the Local Rules to conform to the uniform numbering system, no change in substance is intended. This amendment to the rule was effective on April 15, 1997.

Paragraphs (a) through (c) of this rule were formerly paragraphs (a) through (c) of Local Rule 2.15. Paragraph (d) of this rule was formerly Local Rule 2.16(b). The Advisory Committee Notes to the superseded rules may be helpful in interpreting and applying the current rules.

1995 Amendment Introduction

This rule is amended to reflect the Advisory Committee’s judgment as to the desirability of applying the December 1, 1993, amendments to the Federal Rules of Civil Procedure to contested matters and adversary proceedings and to make other desirable technical changes.

The December 1, 1993, amendments to the Federal Rules of Civil Procedure greatly affect practice in contested matters and in adversary proceedings. Fed. R. Bankr. P. 7016, 7026, 7030, 7031, and 7033 extend the application of Fed. R. Civ. P. 16, 26, 30, 31 and 33 to adversary proceedings. In addition, unless the Court otherwise directs, Fed. R. Bankr. P. 9014 extends the application of Fed. R. Civ. P. 26, 30, 31, and 33 to contested matters pursuant to Fed. R. Bankr. P. 7026, 7030, 7031 and 7033. Although the Advisory Committee deems certain of the December 1, 1993, amendments to be desirable and beneficial to practice in contested matters and adversary proceedings in this Court, it believes that other of the amendments may not be practically or beneficially implemented. The Advisory Committee therefore intends here that the Court “opt out” of certain of these amendments to the Federal Rules of Civil Procedures as they are made applicable to contested matters and adversary proceedings.

Disclosure and Meeting of Counsel

Fed. R. Civ. P. 26(a)(1-4) now mandates the disclosure of certain relevant information. Paragraph (a) of Local Rule 2.15 therefore provides that these new disclosure requirements apply to contested matters and adversary proceedings only if the parties agree or if the Court orders that some or all of the disclosure requirements apply. Fed. R. Civ. P. 26(f) now requires a meeting of the parties and the filing of a proposed discovery plan within certain prescribed time limits. Paragraph (b) of Local Rule 2.15 therefore provides that these meetings and reporting requirements apply in contested matters and in adversary proceedings only upon the agreement of the parties or upon order of the Court.

Initiation of Discovery

Fed. R. Civ. P. 26(d), 30(a)(2)(C), 31(a)(2)(C), 33(a), 34(b), and 36(a) now generally preclude the initiation of any method of discovery until after the parties meet as required by Fed. R. Civ. P. 26(f), unless the parties agree or the Court otherwise orders. Because the Court has eliminated, in paragraph (b), the meeting of the parties requirement of Fed. R. Civ. P. 26(f) unless the Court specifically orders its application, paragraph (c) provides that the parties may initiate discovery immediately after service of the motion or other paper initiating contested matters and the summons and complaint in adversary proceedings. If the Court orders the application of the meeting of the parties requirement of Fed. R. Civ. P. 26(f), however, the early initiation of discovery authorized in paragraph (c) would not apply and the parties would be precluded from initiating discovery until after the Fed. R. Civ. P. 26(f) meeting unless they agreed or the Court orders to the contrary. Paragraph (c) also continues the meaning and the intent of former Rule 2.14 as to depositions upon oral examination.

These amendments to the rule were effective on February 15, 1995.