

Rule 4001-4: First Day Motions

(a) Advance Courtesy Copy to U.S. Trustee. Except as the court may otherwise direct before or after the fact, and in addition to the service required by the Federal Rules of Bankruptcy Procedure, Local Rules and case law, for any motion for which an accelerated hearing or interim relief is sought within the first 30 days after the filing of a chapter 11 petition (e.g., a “first day motion”), the debtor or other movant shall provide the Office of the U.S. Trustee at least 24 hours’ advance notice of the nature of the case, the nature of the relief to be sought, and the proposed timing of the hearing, and shall provide the Office of the U.S. Trustee private courtesy copies of drafts of all such motions as soon as they are in substantially final form. Such advance notice and courtesy copies are required even if this means they must be provided before the petition is filed. The U.S. Trustee shall keep such advance notice and courtesy copies confidential until the case is filed.

(b) Conspicuousness Requirements for First Day, Cash Collateral and Financing Motions In any such motion, any motion for use of cash collateral pursuant to Code § 363, and any motion for postpetition financing pursuant to Code § 364, the first or second paragraph of the motion shall conspicuously state whether any of the followingsfollowing kinds of relief isare sought and, if so, identify the pages of the motion and the attached exhibits that support such relief:

(1) Granting a prepetition creditor a lien or security interest in postpetition assets in which the creditor would not otherwise have a security interest by virtue of its prepetition security agreement and applicable law, other than replacement liens in the same kind of collateral as the creditor had prepetition, in order to obtain the use of that creditor’s cash collateral (sometimes known as “cross-collateralization”);

(2) Findings, conclusions, holdings or orders as to the amount of a secured debt or the validity, perfection and scope of the security interests securing such debt, that purportedly affect the rights of the estate or anyone other than the debtor in possession and the secured creditor;

(3) Release, waiver or abandonment of claims, setoff rights, surcharge rights, avoidance actions and subordination actions against a secured creditor, or findings or stipulations that no such rights exist, that purportedly affect the rights of the estate or anyone other than the debtor in possession and the secured creditor;

(4) Granting of liens or security interests against rights and actions arising under Code §§ 544, 545, 547, 548 or 549;

(5) The use of funds derived from postpetition financing to pay all or part of a prepetition secured debt, or a provision that deems prepetition secured debt to be postpetition secured debt, other than as permitted by Code § 552(b);

(6) Granting surcharge or “carve-out” rights to a debtor’s professionals without providing equivalent treatment to professionals engaged by an authorized committee, or

any restrictions on the surcharge or carve-out rights granted to such professionals other than the requirement for court approval of the fees or expenses (e.g., a restriction against investigating or pursuing causes of action against the secured creditor);

(7) Payment of prepetition wages, salary or other compensation to an employee in an amount in excess of the Code's priority amount, payment of any severance or vacation pay earned prepetition, or payment of any officer's, director's, insider's or equity holder's prepetition wages, salaries, commissions, benefits or consulting fees; and

(8) Priming any secured creditor under Code § 364(d) without that creditor's consent.

(c) Procedure to Obtain Hearing on First Day Matters. If an expedited hearing is required with regard to First Day Motions, the moving party must file a Motion for Accelerated Hearing in compliance with Local Rule 9013-1(h). After such motion is filed, the movant should contact the courtroom deputy, to obtain an expedited hearing date and time. Such party must provide the court with courtesy copies of all pleadings filed, all exhibits, and all proposed orders, in the format requested by the court, and as soon as practicable before the hearing. If a hearing need not be conducted on an expedited basis, the party requesting a hearing should contact the courtroom deputy to request a hearing date and time.

(d) Notice of Hearing on First Day Matters. The moving party shall be responsible to give notice of any hearing set on an expedited basis in compliance with Local Rule 9013-1(h). Notwithstanding service methods otherwise defined in the Bankruptcy Rules or in these Local Rules, the movant is encouraged to make efforts to provide actual notice, and to provide hard or electronic copies of all expedited motions, to parties in interest in advance of the hearing date and time.

(e) Limited Scope of Interim Relief. Absent extraordinary circumstances, the court will ~~ordinarily~~ not grant ~~such~~ a motion that includes any of the provisions listed in subsection (b) above on an interim or accelerated basis, and such provisions may be excluded even from "final" orders issued after 14 days' notice, unless an official creditors' committee has had sufficient time to be appointed, organize, engage professional(s), and analyze and investigate the requested relief with the advice of such professional(s).

(df) Reconsideration of Interim and First Day Orders. On any motion for reconsideration, filed within 30 days of receipt of notice of the entry of the order granting such a motion on shortened notice, the burden of proof with respect to the appropriateness of the relief shall remain on the debtor or other movant notwithstanding the entry of such order, except to the extent of a replacement lien granted for funds necessarily and irrevocably expended in reliance on such order.

~~Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.~~

Committee Notes 2007: This new rule incorporates General Order 82 without change. Committee Notes 2015: Local Rule updated to incorporate uniform procedures for First Day matters, and provide clarification regarding notice to United States Trustee's office, service of orders, and interim nature of first day orders.