

### **LBR 4001(a).3**

#### **AUTOMATIC STAY - EXTENSION OR IMPOSITION**

**(a) Scope of Rule.** This rule applies to motions to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3) or to impose the automatic stay pursuant to § 362(c)(4).

**(b) Deadline to File.** Except for good cause shown in the motion, a motion filed pursuant to 11 U.S.C. § 362(c)(3) shall be filed within 7 days of the date the petition was filed.

**(c) Contents of Motion; Affidavit Required if Presumption Arises Under § 362(c)(3)(C) or § 362(c)(4)(D).**

(1) Contents of Motion. A motion to extend or impose the automatic stay filed pursuant to this rule shall include the following information:

(i) the number of previous cases under the Bankruptcy Code involving the debtor and pending within the one-year period preceding the filing of the current case;

(ii) the jurisdiction and case number of each such case;

(iii) the date and reason for dismissal of each such previous case;

(iv) an express statement whether any presumption of lack of good faith arises pursuant to § 362(c)(3)(C) or § 362(c)(4)(D); and

(v) the facts upon which the movant relies to (i) rebut any presumption of bad faith and (ii) demonstrate that the filing of the later case is in good faith as to any creditors to be stayed.

(2) Affidavit or Declaration Required if Presumption Arises Under § 362(c)(3)(C) or § 362(c)(4)(D). The movant shall attach a notarized Affidavit signed under penalty of perjury containing the facts upon which the movant relies to rebut any presumption under § 362(c)(3)(C) or § 362(c)(4)(D). In lieu of an Affidavit, the movant may file an Unsworn Declaration Under Penalty of Perjury pursuant to 28 U.S.C. § 1746.

**(d) Notice of Hearing.** Upon the filing of a motion subject to this rule, the movant shall prepare and serve a notice of hearing that sets a hearing on the motion to any available docket. Although the Court prefers that hearings on motions filed subject to this rule be set to a docket scheduled to address cases of the same chapter, for purposes of this rule an “available docket” includes any docket that:

(1) is listed on the Court’s published docket calendar for the divisional office where the case is assigned;

(2) is scheduled to occur no earlier than the second business day after the date that an objection to the motion is due; and

(3) in the case of a motion filed pursuant to § 362(c)(3), is scheduled to take place no more than 30 days from the date the petition was filed.

**(e) Special Settings.** If there is no available docket as defined by this rule, or if the movant requires an earlier hearing date, the

movant shall file with the motion a request for expedited hearing, which the Court may grant or deny in its discretion.

**(f) Service of the Motion and Notice of Hearing.**

(1) The movant shall promptly serve the motion (and any Affidavit or Declaration) in the manner required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and these rules, upon each party against whom the movant seeks to extend or impose the stay. The movant shall include a certificate of service with the motion. The movant shall not delay service of the motion pending resolution of a motion for expedited hearing or a motion to shorten time to respond to the motion.

(2) The movant shall serve the notice of hearing in the same manner as required for service of the motion.

**(g) Objection to Motion.** Unless otherwise ordered, any objection to a motion subject to this rule shall be filed within 14 days after service of the motion.

**(h) Order Entered Without Hearing.** The Court may grant the motion in accordance with Fed. R. Civ. P. 43(c) and Fed. R. Bankr. P. 9017, without hearing, only if:

(1) the movant files and serves, along with the motion, the Affidavit or Declaration signed by the movant containing the facts upon which the movant relies to rebut any presumption under § 362(c)(3)(C) or § 362(c)(4)(D);

(2) no objection to such motion is filed within 14 days subsequent to the service of the motion (or such shorter time as is ordered); and

(3) the Court determines that the motion complies with this rule and that the information contained in the Affidavit or Declaration is sufficient to rebut any presumption under § 362(c)(3)(C) or § 362(c)(4)(D).

**(i) No Chapter 13 Trustee Approval.** If the Chapter 13 Trustee has not objected to the motion, the Trustee need not have approved the order granting the motion prior to it being uploaded.

**(j) Hearing if No Order Entered.** If no order has been entered prior to the scheduled hearing, parties should assume the hearing will be held as scheduled, and movant's failure to appear will result in the motion being denied. An objecting party's failure to appear will result in the motion being treated as if that party's objection had been withdrawn.

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Adopted 3/17/15.