

Proposed Local Rules Amendment – Deposit and Investment of Registry Funds

Friday, October 28, 2016

The Local Rules Committee has met and discussed an amendment to the Local Rules. The proposed amendment changes Rule 67 Deposit and Investment of Registry Funds to more fully address investment and taxation of the registry fund.

Below is the current rule and proposed amendments to the current rule are in red.

(Current Rule)

Rule 67. Deposits Into Court

(a) Receipt of Funds

- (1) No money shall be sent to the Court or its officers for deposit in the Court's registry without a court order signed by the presiding judge in the case or proceeding.
- (2) Unless provided for elsewhere in this Order, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.
- (3) The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk of Court.

(b) Investment of Registry Funds

- (1) Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account, CRIS, administered by the Administrative Office of the United States Courts, shall be the only investment mechanism authorized.
- (2) Money from each case deposited in CRIS shall be "pooled" together with those on deposit with Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of Administrative Office of the United States Courts, hereby designated as custodian for CRIS.
- (3) An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from

fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to litigants and/or their counsel.

(c) Deductions of Fees

- (1) The custodian is authorized and directed by this Order to deduct the registry fee for maintaining accounts in CRIS and the investment services fee for the management of investments. The proper registry fee is to be determined on the basis of the rates published by the Director of the Administrative Office of United States Courts as approved by the Judicial Conference. The investment services fee is assessed from interest earning according to the Court's Miscellaneous Fee Schedule.
- (2) If registry fees were assessed against the case under the old 45-day requirement prior to deposit in CRIS, no additional registry fee will be assessed.

(d) Unclaimed Funds. Funds paid into this court which have remained unclaimed for five years and for which the right to withdraw has either been adjudicated or is not in dispute shall be deposited in the Treasury in the name and to the credit of the United States and any claimant with full proof of the right to withdraw may petition the court, with notice to the United States Attorney, and obtain an order authorizing payment.

(e) Criminal Bond Forfeitures. Upon proper motion, any funds deposited by or on behalf of a criminal defendant for bail bond purposes, with the exception of funds deposited by a third party surety, may be held and paid over to the United States Attorney for payment of any assessment, fine, restitution, or penalty imposed upon the criminal defendant.

(Proposed Amendment)

Rule 67. Deposit and Investment of Registry Funds

(a) Receipt of Funds

- (1) No money shall be sent to the Court or its officers for deposit in the Court's registry without a court order signed by the presiding judge in the case or proceeding.
- (2) The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk of Court.

- (3) Unless provided for elsewhere in this **Local Rule**, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(b) Investment of Registry Funds

- (1) Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account **or invested in a court-approved, interest-bearing instrument in accordance with Rule 67 of the Federal Rules of Civil Procedure, the Court Registry Investment System (“CRIS”)**, administered by the Administrative Office of the United States Courts **under 28 U.S.C. § 2045**, shall be the only investment mechanism authorized.
- (2) **Interpleader funds deposited under 28 U.S.C. § 1335 meet the Internal Revenue Service definition of a “Disputed Ownership Fund” (DOF), a taxable entity that requires tax administration. Unless otherwise ordered by the Court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements.**
- (3) **The Director of the Administrative Office of the United States Courts is designated as custodian for all CRIS funds. The Director or the Director’s designee shall perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.**
- (4) Money from each case deposited in the CRIS shall be “pooled” together with those on deposit with Treasury to the credit of other courts in the CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts. **The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.**
- (5) An account will be established in the CRIS **Liquidity Fund** titled in the name of the case giving rise to the **deposit invested** in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account’s principal and earnings has to the aggregate principal and income total in the fund **after the CRIS fee has been applied**. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in the CRIS and made available to litigants and/or their counsel.

- (6) For each interpleader case, an account shall be established in the CRIS Disputed Ownership Fund, titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case after the DOF fee has been applied and tax withholdings have been deducted from the fund. Reports showing the interest earned and the principal amounts contributed in each case will be available through the FedInvest/CMS application for each court participating in the CRIS and made available to litigants and/or their counsel.

(c) Fees and Taxes

- (1) The custodian is authorized and directed by this Local Rule to deduct the CRIS fee of an annualized 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in the CRIS. According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.
- (2) The custodian is authorized and directed by this Local Rule to deduct the DOF fee of an annualized 20 basis points on assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases. The custodian is further authorized and directed by this Local Rule to withhold and pay federal taxes due on behalf of the DOF.

(d) Transition from Former Investment Procedure

- (1) Deposits to the CRIS DOF will not be transferred from any existing CRIS Funds. Only new deposits pursuant to 28 U.S.C. § 1335 from the effective date of this Local Rule will be placed in the CRIS DOF.
- (2) This Local Rule supersedes and abrogates all prior orders and Local Rules of this Court regarding the deposit and investment of registry funds.
- (3) *The effective date of this Local Rule is the date the CRIS DOF begins accepting deposits.*

Comments regarding these proposed amendments should be sent to:
public-comment@vawd.uscourts.gov by November 28, 2016.