Local Bankruptcy Rules for the Northern District of New York

Local Bankruptcy Rules

Effective January 1, 2012

Update Effective December 1, 2016

(Rev. 12-01-2016)

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

****
IN THE MATTER OF:

Local Rules of Practice for the
United States Bankruptcy Court
for the Northern District of New York

****

The United States Bankruptcy Court for the Northern District of New York has completed the review and revision of its local rules. Public comments were solicited from April 11, 2011 to July 1, 2011 and have been incorporated into the rules. The proposed revisions to the local rules were circulated to the Board of Judges for the Northern District of New York.

The Board of Judges have approved the modifications to the Bankruptcy Rules as submitted. The Bankruptcy Rules for 2012 should now be transmitted by the Bankruptcy Clerk to the Circuit Executive for inclusion at the December meeting of the Council.

So Ordered this 22nd day of November, 2011 at Syracuse, New York

Norman A. Mordue
Chief United States District Court Judge

(Rev. 12-01-2015)

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RULE 1001-1 SHORT TITLE – APPLICABILITY

(a) **Short Title.** These local rules shall be known as the Local Bankruptcy Rules for the Northern District of New York and may be referred to and cited in papers filed in this Court as "Local Bankruptcy Rule - " or "LBR - ."

(b) **Applicability.** The Local Bankruptcy Rules supplement the Federal Rules of Bankruptcy Procedure. These Local Bankruptcy Rules shall govern all proceedings in bankruptcy cases filed in the Northern District of New York.

(c) **Sectional References.** Unless otherwise indicated, all sectional references herein are to Title 11 of the United States Code.

(d) **Hyperlinks.** Unless otherwise indicated, hyperlinks are to Official Forms, Local Forms and Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means ("Administrative Procedures") available on the Court's website located at www.nynb.uscourts.gov .

(e) **Defined Terms.** See LBR 9001-1.

Comment

Under the authority of Fed. R. Bankr. P. 9029, the District Court may make and amend rules of practice and procedure not inconsistent with the Federal Rules of Bankruptcy Procedure and that do not prohibit or limit the use of the official forms.

These Local Bankruptcy Rules, effective January 1, 2012, supersede and rescind the Local Bankruptcy Rules adopted October 27, 1994, January 1, 1998, and October 24, 2005. The numbering system used correlates each Local Bankruptcy Rule to the most closely associated Federal Rule of Bankruptcy Procedure, in conformity with the Uniform Numbering System prescribed by the Judicial Conference of the United States.

These Local Bankruptcy Rules incorporate certain Administrative Orders entered prior to October 1, 2011. Incorporated orders have been abrogated as indicated in Appendix III and are also noted on the court's website: www.nynb.uscourts.gov .

A Court may issue an Administrative Order that modifies or abrogates one or more of these Local Bankruptcy Rules. A list of Administrative Orders is available on the Court's website: www.nynb.uscourts.gov .

RULE 1002-1 COMMENCEMENT OF THE CASE

(a) **Electronic Case Filing and Signature.** Under the CM/ECF system, the Clerk no longer accepts original paper documents for filing. The petition must be signed and dated by the debtor contemporaneously with the filing. An electronic signature satisfies the requirement that petitions, verifications, resolutions, declarations, etc. be signed. An electronic signature is considered an original signature upon the filed documents for all purposes under the Bankruptcy Code, relevant federal and state statutes, and applicable federal rules. A pro se party may file a petition and other documents in paper format.

(b) **Filing Fees.** The Clerk shall not accept a petition to commence a case unless accompanied by: (1) the applicable filing fee; (2) an application pursuant to Fed. R. Bankr. P. 1006(b)(1) to pay the filing fee in installments (Official Form 103A); or (3) an application pursuant to Fed. R. Bankr. P. 1006(c) requesting a waiver of filing fee (Official Form 103B).

(c) **Where to File.**

(1) Except as set forth below, a petition, motion, pleading, memorandum of law, or other document required to be in writing must be filed electronically or in the Clerk's office where the assigned judge sits. The Clerk or the Court may make arrangements to permit the filing of a pleading or other paper at a location other than an official courthouse within the district after regular business hours on weekdays and on Saturdays, Sundays, and legal holidays for good cause shown.

(2) An attorney may use public scanners and computers located at the Public Intake Counter. A pro se party may file all papers and pleadings in paper format in any Clerk's office.

(d) **Corporate Resolution.** A voluntary petition filed by a corporation shall be accompanied by a copy of the corporate resolution or other appropriate authorization, duly attested to, authorizing such filing.

(e) **LLC Authority.** A voluntary petition filed by a limited liability company shall be accompanied by a copy of the appropriate authorization, duly attested to, authorizing such filing.

(f) **Partnership Declaration.** A voluntary petition filed by a partnership shall be accompanied by a copy of the appropriate authorization, duly attested to, authorizing such filing.

(g) **LLP Authority.** A voluntary petition filed by a limited liability partnership shall be accompanied by a copy of the appropriate authorization, duly attested to, authorizing such filing.

(h) **Deficient Petitions and Papers.** The Clerk may issue a notice specifying filing deficiencies to the filer of the document.

(i) **Noncompliance.** The failure to comply with the requirements of this Rule and the Federal Rules of Bankruptcy Procedure may subject the case to dismissal.

Comment

Fed. R. Bankr. P. 5005(a)(2) permits a court by local rule to require documents to be filed, signed, or verified by electronic means. Although Fed. R. Bankr. P. 5005(a)(1) requires the Clerk to accept papers for filing that are not in proper form, paragraph (i) of this Rule makes clear that the Court may take appropriate action to enforce this Rule.

Once an initial waiver of the filing fee is granted under Fed. R. Bankr. P. 1006(c), that waiver shall apply to the debtor for all future fees assessed by the Clerk in that case, unless otherwise ordered by the Court.

Filing fees for the commencement of a case under the respective chapters of the Bankruptcy Code are set forth in 28 U.S.C. § 1930(a). Filing fees for the commencement of an adversary proceeding are authorized by 28 U.S.C. § 1930(b) and set forth in the Judicial Conference Schedule of Fees.

RULE 1003-1 INVOLUNTARY PETITION – FILING REQUIREMENTS

(a) **Electronic Filing.** An involuntary petition (Official Form 105 or 205) shall be filed using the CM/ECF system.

(b) **Matrix.** An involuntary petition shall be accompanied by a matrix, in proper form as set forth in LBR 1007-2(c), containing the name and address, including zip code and any post office address of all petitioning creditors, any attorneys for petitioning creditors, and any other parties in interest known to the petitioning creditors or their attorney.

(c) **Certification of Matrix.** The matrix required by paragraph (b) shall be certified in the manner directed in LBR 1007-2(f).

(d) **Noncompliance.** The failure to comply with the requirements of this Rule and the Federal Rules of Bankruptcy Procedure may subject the case to dismissal.

RULE 1005-1 PETITION – CAPTION

(a) **Individual Petition.** The title of a case for an individual debtor shall include all names used by the debtor during the preceding eight years. This includes trade names, aliases, maiden names, and former married names. An individual debtor may not include as a d/b/a on the second line of the voluntary petition, which forms the basis for the caption of the case, the name of a corporation, partnership, limited liability company, limited liability partnership or any other separate and distinct legal entity when prompted to supply "All Other Names used by the Debtor in the last 8 years."

(b) **Corporate, Partnership, LLC or LLP Petition.** A corporate, partnership, limited liability corporation or limited liability partnership petition may not be combined with the petition of an individual or other separate legal entity. The caption of the petition must state the full and correct title of the entity and the entity's federal identification number.

Comment

Consult LBR 9004-1 for the format of a caption on a document for filing.

RULE 1007-1 STATEMENT OF SOCIAL SECURITY NUMBER, PAYMENT ADVICES AND FINANCIAL MANAGEMENT CERTIFICATE

(a) **Verified Statement of Full Social Security Number.** Fed. R. Bankr. P. 1007(f) requires the debtor to submit a verified statement (Official Form 121) of his or her full social security number. The verified statement is not filed in the case and does not become a part of the Court record or the public record. The completed and verified statement shall be retained by the debtor's attorney for two (2) years in accordance with LBR 9011-3(e) or, if the debtor is pro se, by the debtor for two (2) years.

(b) **Submission with Petition Filed in Paper Format.** When a petition is filed in paper format, the debtor is required to submit the original signed statement contemporaneously with the filing of the petition.

(c) **Submission with Electronically Filed Petition.** When a petition is electronically filed, the debtor is required to sign the statement of full social security number. The debtor's attorney is required to retain the original with his or her records. The form shall not be filed electronically with the petition and shall not be submitted to the Clerk.

(d) **Amendment of Social Security Number.** If a petition is filed with an incorrect social security number, debtor's counsel shall immediately:

(1) Submit, in paper format, to the Clerk an amended verified statement indicating both the incorrect social security number and the debtor's full and correct social security number;

(2) Serve the amended verified statement referenced in paragraph (d)(1) of this Rule upon all creditors, the trustee, and the United States trustee;

(3) File a certificate of service; and

(4) If the error affects the last four (4) digits of the debtor's social security number, in addition to submitting an amended verified statement, also file an amended petition showing the corrected last four (4) digits of the debtor's social security number.

(e) **Payment Advices.** If a debtor cannot comply with § 521(a)(1)(B)(iv), the debtor shall complete and file a Payment Advice Form.

(f) **Personal Financial Management Certificate.** Every individual debtor in a case filed under chapter 7, chapter 11, or chapter 13 must complete a post-petition instructional course concerning personal financial management as required by Fed. R. Bankr. P. 1007(b)(7).

(1) Failure to timely file evidence of completion of course. If a debtor under chapter 7 or 13 fails to file a statement (Official Form 423) or a certificate from an approved provider evidencing completion of a course in financial management as required under Fed. R. Bankr. P. 1007(b)(7) within the time limits prescribed by Fed. R. Bankr. P. 1007(c), the Clerk may close the case without discharge and shall notify creditors. A motion to reopen the case to obtain a discharge will be subject to the applicable fee.

(2) Deceased Debtor Excused from Compliance. If a debtor dies after the filing of the petition and prior to completing the course in financial management, the debtor's attorney may file an ex parte application requesting a waiver of the completion of the course. A redacted version of the death certificate shall be attached as an exhibit to the application with service on the United States trustee and the case trustee.

(g) Noncompliance. The failure to comply with the requirements of this Rule and the Federal Rules of Bankruptcy Procedure may subject the case to dismissal.

RULE 1007-2 MAILING MATRIX

(a) **Matrix.** When a list of creditors or list of equity security holders is required to be filed pursuant to Fed. R. Bankr. P. 1007, it shall be accompanied by a matrix containing the name and address of all creditors and other parties in interest. In addition, the list of the twenty (20) largest unsecured creditors filed pursuant to Fed. R. Bankr. P. 1007(d) shall be accompanied by a separate matrix. Each matrix shall be submitted in proper form, as described in paragraph (c) and (d) of this Rule.

(b) **Reliance Upon the Matrix.** The Clerk may rely upon the matrix as filed and any amendments thereto, for purposes of providing notice as required by these Local Bankruptcy Rules and the Federal Rules of Bankruptcy Procedure.

(c) **Matrix Format.** The mailing matrix must be formatted as follows:

(1) The matrix must be compatible with CM/ECF and must be formatted as a text file (*.txt) in ASCII format;

(2) The matrix must be typed in at least a 12-point font;

(3) The entries must appear in a column (left, center or right justified) with a one (1) inch margin;

(4) Entries should be in both uppercase and lowercase letters;

(5) Each creditor entry must consist of no more than five (5) single-spaced lines;

(6) Each line must contain no more than forty (40) characters, including spaces and punctuation;

(7) Each creditor's city, state, and zip code must all appear together on the final line;

(8) The two (2) letter state identifier as prescribed by the United States Post Office shall be used in an address with no periods included;

(9) If required under the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, any attention lines or account numbers should be typed on the second line of the creditor's entry, and not on the last line. Account numbers should be in redacted format, identifying the last four (4) digits only; and

(10) There must be a double space between each creditor entry.

(d) **Additional Copy of Mailing Matrix Required.** In addition to the matrix filed in accordance with paragraph (c) above, a .pdf version of the matrix must be filed as either an attachment to the petition or as a stand-alone document.

(e) **Matrix Certification**. Whenever a matrix is required to be submitted pursuant to paragraph

(a) of this Rule, paragraph (b) of LBR 1003-1, paragraph (d) of LBR 1009-1, paragraph (c) of LBR 1015-1, paragraph (c) of LBR 1019-1 or as otherwise required by the Court, the proponent or proponent's attorney must certify that the matrix contains the name, address, and zip code of all creditors and entities that appear in the list of creditors, list of equity security holders, list of twenty (20) largest unsecured creditors, or amendments thereto. The certification shall conform substantially to the following:

CERTIFICATION OF MAILING MATRIX

I (we), _____ , the attorney for the debtor/petitioner (or, if appropriate, the debtor(s) or petitioner(s) hereby certify under the penalties of perjury that the above/attached mailing matrix has been compared to and contains the names, addresses, zip codes and, if required, account numbers, in redacted form, of all persons and entities, as they appear on the list of creditors/list of equity security holders, or any amendment thereto filed herewith.

Dated:

_____

Attorney for Debtor/Petitioner
(Debtor(s)/Petitioner(s))

(f) **Matrix Certification in an Involuntary Case.** Whenever a matrix is required to be submitted in an involuntary case the proponent or proponent's attorney must certify that the matrix contains the name and address, of all petitioning creditors, their attorneys and any other parties in interest known to the petitioning creditors or their attorneys. The certification shall conform substantially to the following:

CERTIFICATION OF MAILING MATRIX IN AN INVOLUNTARY CASE

I (we) , _____, the attorney for the petitioning creditors hereby certify under the penalties of perjury that the above/attached mailing matrix has been compared to and contains the names and addresses, zip codes and, if required, account numbers, in redacted form, of all persons and entities, as they appear on the list of creditors/list of equity security holders, or any amendment thereto filed herewith of the petitioning creditors, any attorneys for petitioning creditors and any other parties in interest known to the petitioning creditors or their attorney.

Dated:

_____

Attorney for Petitioning Creditors

(g) **Noncompliance.** The failure to comply with the requirements of this Rule and the Federal Rules of Bankruptcy Procedure may subject the case to dismissal.

Comment

An example of an entry that complies with this Rule appears below.

XYZ, Inc. Acct. No. XXX-XXX-1234 ATTN: 567 Avenue A Albany, NY 12207

RULE 1007-3 NOTICE TO CREDITORS OMITTED FROM OR INCORRECTLY LISTED ON MAILING MATRIX

(a) **Notice of Amendment to Add Creditor or Correct Creditor Information.** If a debtor adds a creditor to the case or corrects the name or address of a creditor by amending either the schedules, the list of creditors, or matrix previously filed, the debtor must serve upon that creditor copies of the following:

(1) The amendment with the debtor's signed declaration (Official Form 106Dec or 202 - Declaration);

(2) Notice of Meeting of Creditors;

(3) Verified Statement of Social Security Number (Official Form 121);

(4) Any matters previously noticed by the Clerk;

(5) Any other document filed in the case that affects the creditor's rights; and

(6) Any order that establishes or extends a bar date for claims or sets a deadline for creditors to file complaints to determine the dischargeability of certain debts or to object to the discharge of the debtor.

(b) **Certificate of Compliance.** The debtor must file a certificate of compliance with this Rule, together with a dated and clearly titled amended mailing matrix that lists only the name and correct mailing address of each newly scheduled or corrected creditor. The certification shall conform substantially to the following:

CERTIFICATION OF COMPLIANCE WITH LBR 1007-3

I (we) , the attorney for the debtor(s)/petitioner(s) (or if appropriate, the debtor(s) or petitioners(s)) hereby certify under the penalties of perjury that on date , schedules or an amended mailing matrix were filed.

The amended mailing matrix, which is clearly titled **AMENDED** matrix lists only the name and correct mailing address of each newly scheduled creditor or the corrected name and corrected mailing address of each creditor who was listed incorrectly on the mailing matrix filed with the petition.

I (we) further certify that any newly listed creditor and/or corrected creditor has been noticed as required by LBR 1007-3(a).

Dated:

_____
Attorney for Debtor/Petitioner/Pro Se Debtor

RULE 1009-1 AMENDMENT TO A PETITION, LIST, SCHEDULE, STATEMENT, SUMMARY OR MAILING MATRIX

(a) **Caption.** Each amendment to a petition, list, schedule, statement, summary, and mailing matrix shall contain a caption complying with Fed. R. Bankr. P. 1005 and 9004(b) and include the word "AMENDED" in the document's caption.

(b) **Interlineation.** No amendment by interlineations shall be permitted. The entire page or pages that the amendment affects shall be redrafted with the amendment "boxed in," and in such a manner that the amended page(s) will be complete without referring to the page or pages that have been amended.

(c) **Schedules of Property ("A/B"), and Creditors ("D" and "E/F").** Each amendment to the schedules that affects the amount claimed shall be totaled on: (1) the amended schedule; and (2) the amended summary of schedules (Official Form 106Sum or 206Sum) and statistical summary of certain liabilities and related data (Official Form 106Sum or 206Sum).

(d) **Mailing Matrix.** Each amendment to the schedules that adds a party to the case or corrects the name or address of a party shall include an amended certified mailing matrix, listing only the new or corrected party and/or information.

(e) **Amended List of Creditors.** If the debtor files a list of creditors and their addresses in lieu of completed schedules as permitted by Fed. R. Bankr. P. 1007(c), and thereafter includes a creditor in the schedules not included in the original list of creditors, the schedules shall be treated as an amendment and the debtor shall file an amended list of creditors.

(f) **Amendment to Claim of Exemption.** An amendment to a claim of exemption pursuant to Fed. R. Bankr. P. 4003(a) shall be filed and served by the debtor or dependent of the debtor on the trustee, the United States trustee, and all creditors.

(g) **Notice of Amendment.** If the debtor amends a petition, list, schedule, statement, summary, or mailing matrix pursuant to Fed. R. Bankr. P. 1009, the debtor shall immediately serve notice of such amendment upon the United States trustee, trustee, and any entity affected thereby.

(h) **Notice of Amendment to Add a Creditor.** If a debtor adds a creditor to the case, the debtor must comply with the notice procedure as described in LBR 1007-3(a).

(i) **Certificate of Service.** Upon filing an amendment, the debtor shall file a certificate reflecting service of the notice of the amendment upon all parties entitled to notice under paragraph (g) of this Rule or paragraph (a) of LBR 1007-3.

(j) **Filing Fee.** Any fee required by 28 U.S.C. § 1930(b) and the appendix, must be paid at the time of the filing of the amendment.

Comment

Amendments shall be filed in the form prescribed in LBR 9004-1 and in accordance with rules 1007-1 and 1007-3. A tutorial on how to comply with this rule is available on the court's website.

An example of an amendment that complies with this Rule appears below:

B6C (Official Form 6C) (04/10)

In re James Greenstreet, **Debtor** **Case No.** 11-98765 **(If known)**

Amended **SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**

Debtor claims the exemptions to which debtor is entitled under: (Check one box)
☒ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds $146,450.*

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Debtor's Homestead	CPLR § 5206	50,000	10,000
Primary Vehicle	Debtor Creditor Law § 282(1)	500.00	500.00

* *Amount subject to adjustment on 4/1/13 and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

RULE 1011-1 CONSENT TO INVOLUNTARY PETITION

(a) **Corporation, LLC or LLP.** A consent to an involuntary petition filed against a corporation, limited liability company, or limited liability partnership shall be accompanied by a copy of the corporate resolution or other appropriate authorization, duly attested to, authorizing such consent.

(b) **Partnership.** A consent to an involuntary petition filed against a partnership shall be accompanied by appropriate authorization, duly attested to by all general partners, authorizing such consent.

RULE 1014-1 INTERDISTRICT TRANSFER OF CASES OR PROCEEDINGS

After the expiration of fourteen (14) days from the date of entry of an order transferring a case or proceeding from this district to another district, the Clerk shall mail to the court to which the case is transferred: (1) an order of transfer; and (2) the original documents on file in the case or proceeding. If the documents in a transferred case or proceeding are only available in electronic format in the CM/ECF system, the Clerk shall mail to the court to which the case is transferred a notice to obtain the required documents from PACER.

Comment

Intradistrict transfer of cases is governed by LBR 1073-1.

RULE 1015-1 CONSOLIDATION OR JOINT ADMINISTRATION

(a) Joint Case.

(1) Husband and Wife Joint Case. A case filed by a husband and wife under § 302 shall be presumptively consolidated. In a chapter 7 asset case, the assets and liabilities shall be combined into a single pool to pay creditors, unless the court, upon motion made returnable prior to the final hearing on the trustee's final report and accounting, terminates the consolidation.

(2) Motion to Sever. At the request of one (1) or both of the joint debtors, and upon payment of the required fee, the joint bankruptcy case may be severed into two (2) separate cases, after which either debtor may convert his or her individual case. A motion to sever is not required for dismissal of a case with respect to one (1) of the joint debtors.

(b) Motion. A motion for joint administration or consolidation shall: (1) be filed in each of the affected cases; (2) be served on all creditors and parties in interest; and (3) designate one (1) of the cases as the main case.

(c) Matrix. Prior to the entry of an order of joint administration or consolidation, movant shall request copies from the Clerk or through PACER of the matrices for each of the cases affected by the order. Movant shall submit a supplemental certified matrix containing only those parties not already included on the matrix from the main case, without duplications or omissions. The matrix must comply with the filing requirements as set forth in LBR 1007-2 and shall be filed within seven (7) days of the entry of the order of consolidation or joint administration. This requirement shall not apply to the consolidation of a joint case under paragraph (a) of this Rule.

(d) Order. The proposed order of joint administration or consolidation must identify the main case and be uploaded in only the main case. The order shall be entered by the Clerk in each of the affected cases. In addition, the proposed order shall contain the following recitation:

> Within seven (7) days of entry of this order, movant shall submit a supplemental certified mailing matrix, in conformance with LBR 1007-2, containing only those parties not previously included on the mailing matrix filed in the main case.

(e) Caption, Docket Entries and Filing. Prior to the entry of an order of consolidation or joint administration, all documents shall be captioned by their individual titles.

(1) Consolidation. Once separate cases have been ordered consolidated, they will be treated as one (1) case for all purposes, with a single case number, caption, claims register and docket.

(2) Joint Administration. Subsequent to the entry of an order of joint administration, all documents shall be captioned in the case or cases to which they pertain and

shall be entered and filed in the main case. The Clerk may rely upon the document's caption in determining the case or cases to which a particular document applies.

(3) **Proofs of Claim.** A proof of claim should be filed in the case for the specific debtor against which the creditor holds the claim. It is the responsibility of the filing party to correctly identify the case in which to file the claim. A claim filed after cases have been ordered jointly administered is docketed per the case number identified on the claim.

(f) **Noncompliance.** Failure to comply with paragraph (c) of this Rule is cause for the Court to vacate its order of joint administration or consolidation and deny the relief requested.

Comment

Consolidation includes substantive consolidation.

An example of a caption for a jointly administered case is:

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF NEW YORK	
In re:	
ABC COMPANY, LP, et al.,	Case No. 10-XXXXX Chapter 11(Main Case)
Debtors.	Case No. 10-XXXXX Case No. 10-XXXXX
_____	Jointly Administered

RULE 1017-1 DISMISSED CASE – MOTION TO VACATE ORDER OF DISMISSAL AND TO REINSTATE CASE

(a) **Time to File a Motion.** A motion to vacate or reconsider an order of dismissal shall be filed in accordance with the requirements of Fed. R. Bankr. P. 9023 and/or 9024, as applicable. The motion shall be served upon all creditors and parties in interest, at the address listed on the certificate of service of the notice of dismissal.

(b) **Case Dismissed for Non-Payment.** A motion filed in a case dismissed for failure of the debtor to make plan payments shall state with particularity:

(1) The circumstances that caused the debtor's non-payment;

(2) The circumstances that have changed so as to permit the debtor to make future payments;

(3) The date and manner of the proposed future payments by the debtor to the trustee; and

(4) Any new debt incurred by the debtor since the date of dismissal.

(c) **Submission of Proposed Order.** A proposed order granting a motion under this Rule shall be titled "Order Vacating Order of Dismissal and Reinstating Case."

(d) **Service of Order.** The debtor shall serve the order vacating the order of dismissal and reinstating the case upon all creditors and parties in interest at the address listed on the certificate of service of the notice of dismissal. The debtor shall file a certificate of service.

Comment

This motion may be pursued on a default basis under LBR 9013-3.

This Rule does not apply to a closed case. If the case is closed, parties must proceed under § 350 and Fed. R. Bankr. P. 5010, which require payment of a fee for reopening the case pursuant to 28 U.S.C. § 1930(b). The fee to be charged for reopening shall be the same as the filing fee in effect for commencing a new case as of the date of reopening.

RULE 1017-2 CONVERSION FROM CHAPTER 7 TO CHAPTER 13

A debtor who seeks to convert a chapter 7 case to a chapter 13 case must do so by motion. The debtor must assert facts that demonstrate eligibility for chapter 13 relief and that the conversion is sought in good faith. The motion must be served upon all creditors and parties in interest, the chapter 7 trustee, and the United States trustee. The debtor shall file a certificate of service.

Comment

This motion may be pursued on a default basis under LBR 9013-3.

RULE 1017-3 CONVERSION FROM CHAPTER 12 OR CHAPTER 13 TO CHAPTER 7

A debtor who seeks to convert a chapter 12 or 13 case to a chapter 7 need only file a notice of conversion, signed by the debtor. No order of conversion is required. The filing date of the notice of conversion becomes the date of the conversion order for purposes of applying § 348(c) and Fed. R. Bankr. P. 1019.

RULE 1019-1 CONVERSION – PROCEDURE FOLLOWING

(a) **Filing of Additional Lists, Schedules, and Statements.** In accordance with Fed. R. Bankr. P. 1019, the previously filed petition, lists, schedules, statements, and claims actually filed shall be deemed filed in the converted case. Only the lists, schedules, and any other statements necessary to complete the filing requirements in the newly converted case shall be filed upon conversion.

(b) **Timeliness of Filing Schedule of Unpaid Debts.** When the schedule of unpaid debts is filed in a case converted to chapter 7 within the period prescribed by Fed. R. Bankr. P. 1019(5), the Clerk shall notice each creditor listed on the schedule regarding the filing of post-petition claims pursuant to Fed. R. Bankr. P. 1019(6). When the schedule is untimely filed, the filer shall provide the notice required by this paragraph, and file a certificate of service.

(c) **Supplemental Matrix.** Any list, schedule, or statement filed as a result of a conversion that includes a creditor not previously listed on the case matrix, shall be accompanied by a supplemental certified matrix prepared as directed by LBR 1007-2, which lists, without duplication, only the additional creditor.

(d) **Duties of Trustee or Debtor in Small Business Case upon Conversion to Chapter 11.** Within seven (7) days of the conversion of a chapter 7, 12, or 13 case to chapter 11, the trustee or the debtor in possession shall file the additional items required pursuant to § 1116(1)(A) or a statement pursuant to § 1116(1)(B).

(e) **Debtor's Affidavit upon Conversion to Chapter 11.** In addition to the information required by LBR 2015-2, the debtor's affidavit shall set forth:

(1) If the case was originally commenced under chapter 7, 12, or 13, the name and address of any trustee appointed in the case and the name and address of each member elected to the creditors' committee in the chapter 7 case; and

(2) The name and address of each committee member and any attorney for such committee, organized prior to the order for relief in a chapter 11 case, and a brief description of the circumstances surrounding the formation of the committee, including the date of formation.

Comment

This Rule should be read in conjunction with LBRs 1002-1, 1007-2, 1007-3 and 2015-2.

RULE 1073-1 CASE ASSIGNMENT AND INTRADISTRICT TRANSFER

(a) **Assignment of a Case and Adversary Proceeding to Albany.** A case in which the domicile, residence, principal place of business, or principal asset(s) of the debtor is within Albany, Clinton, Essex, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, or Washington county will be assigned to the Albany Court. A case filed by a resident of Columbia, Greene, or Ulster county will be treated as a Northern District case and assigned to the Albany Court when filed in the Northern District of New York.

(b) **Assignment of a Case and Adversary Proceeding to Utica.** A case in which the domicile, residence, principal place of business, or principal asset(s) of the debtor is within Broome, Chenango, Delaware, Franklin, Fulton, Hamilton, Herkimer, Lewis, Madison, Montgomery, Oneida, Otsego, or St. Lawrence county will be assigned to the Utica Court.

(c) **Assignment of a Case and Adversary Proceeding to Syracuse.** A case in which the domicile, residence, principal place of business, or principal asset(s) of the debtor is within Cayuga, Cortland, Jefferson, Onondaga, Oswego, Tioga, or Tompkins county will be assigned to the Syracuse Court.

(d) **Assignment Generally.** Except as otherwise provided in the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the assignment of a case to a Court includes the assignment of all proceedings arising under Title 11 or arising in or related to a case under Title 11.

(e) **Intradistrict Transfer.** Irrespective of the case assignment, a Court may transfer to another Judge within the district any case, contested matter, or adversary proceeding.

(f) **Objections to Assignment.** Objections to assignment of cases, adversary proceedings, or contested matters shall be filed with the Court assigned to the case.

Comment

Erroneous information on a petition may result in the incorrect assignment of a case. The Clerk may advise the Court if it appears that the case has been improperly assigned. Appropriate adjustment may be made pursuant to paragraph (e) of this Rule. The intentional furnishing of incorrect information may subject the person who provided such information to sanctions.

Interdistrict transfer of cases is governed by LBR 1014-1.

RULE 2002-1 NOTICE TO CREDITORS AND OTHER INTERESTED PARTIES

(a) **Notice to All Creditors.** Notice of the following actions shall be given by the proponent thereof, other than the United States trustee, to all creditors and parties in interest:

(1) A proposed use, sale, or lease of property other than in the ordinary course of business;

(2) The hearing on approval of a compromise or settlement of a controversy;

(3) In chapter 7, 11, and 12 cases, the hearing on the dismissal or conversion of the case to another chapter;

(4) The time fixed to accept or reject a proposed modification of a plan;

(5) Except as limited by paragraph (b), a hearing on all applications for compensation or reimbursement of expenses from the estate totaling in excess of $1,000.00;

(6) The time fixed for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary;

(7) The time fixed for filing objections and the hearing to consider confirmation of a plan under chapter 9, 11 or 12;

(8) The notice of entry of an order confirming a plan under chapter 9, 11 or 12; and

(9) In a chapter 7 case, the notice of the trustee's final report.

(b) **Limited Notice.** Where an official creditors' committee has been appointed and as permitted by Fed. R. Bankr. P. 2002(i), required notice of hearings on the actions described below may be limited to such a committee or its authorized agent, the United States trustee, and to any creditor and equity security holder who files with the Court a request that all notices be mailed to them:

(1) Approval of a compromise or settlement; and

(2) Application for compensation or reimbursement of expenses from the estate totaling less than $25,000.00.

(c) **Certificate of Service.** A certificate of service conforming to LBR 9013-1(c) shall be filed within seven (7) days of effecting service and not later than seven (7) days prior to the return date of the hearing. For the purpose of preparing address labels, a copy of the updated matrix can be obtained from PACER or upon request from the Clerk.

(d) **Notice to Committees.** Except as the Court may otherwise designate, pursuant to Fed. R. Bankr. P. 9007, service of notice upon a committee may be made by serving the committee chairperson, the appointed attorney for the committee, if any and other authorized agent. Upon application by a party in interest, the Court may designate additional entities to which notice shall be given.

(e) **Return Address on Court Generated Notices.** The Clerk shall place the name and address of the debtor's attorney of record, or that of the pro se debtor, as the case may be, as the return address on all notices sent out by the Court to all creditors and other parties in interest.

(f) **Returned Mail, Duty to Re-Notice, and File Certificate of Service.** If a notice referred to in paragraph (e) is returned as undeliverable, debtor's counsel or the pro se debtor shall promptly send out the notice to any corrected address noted thereon. A certificate of service conforming to LBR 9013-1(c) shall be filed within seven (7) days of effecting service and not later than seven (7) days prior to the return date of a hearing.

Comment

This Rule is intended to facilitate the service of papers. The proponent of a notice under subparagraphs (a)(1), (2), (3), or (5) should consult LBR 9013-1(d) for the content of the notice.

RULE 2014-1 APPLICATION FOR EMPLOYMENT OF PROFESSIONAL PERSONS

(a) **Requirements of the Application and Affidavit.** Except as set forth in paragraph (e), an order approving the employment of a professional, shall be sought by application and supporting affidavit.

(1) **Application.** A copy of any written retainer agreement, and of any written guaranty agreement, shall be submitted with and appended to the application. An order approving the employment of a professional person pursuant to § 327 shall be granted only on application by the trustee, debtor in possession or committee. The application shall fully disclose:

(A) The reason the professional should be hired;
(B) The professional terms and conditions of employment, including any arrangement for retainer;
(C) The professional services to be rendered;
(D) The source of any retainer;
(E) The hourly rates for professional and paraprofessionals;
(F) Any contingency fee arrangement; and
(G) All of the professional's connections with the debtor or any party in interest, including disclosure of the terms of any guaranty agreement with respect to payment of the professional's fee by a third party.

(2) **Affidavit.** The application shall be accompanied by an affidavit of the professional, setting forth any facts which might reasonably lead to the conclusion the professional may not be disinterested or may hold or represent an interest adverse to the debtor as defined in § 101(14).

(3) **Order.** A proposed order approving the employment shall be submitted with and appended to the application required by paragraph (a) as an exhibit.

(b) **Notice to the United States Trustee**. The application for employment shall be electronically filed with the Court. The United States trustee shall file a response, if any, within twenty-one days from the date application is filed. The application will be deemed ripe for the Court's consideration upon the earlier of (1) the filing of a response by the United States trustee, or (2) the expiration of the twenty-one day period. If an objection to the application or the proposed order approving the employment is filed, a hearing on the application will be set by the Clerk. If no action is taken by the United States trustee within the twenty-one day period, the Court, in its discretion, may schedule a hearing on the application or enter an order approving the employment.

(c) **Order Approving Employment.** An order approving the application shall be submitted to the Court upon the earlier of (1) the United States trustee's consent to the application, (2) the expiration of the twenty-one day period referenced in paragraph (b), if no objection is filed, or (3) the conclusion of a hearing on the application. The order shall clearly state, *inter alia*, that no fees will be paid to the professional, including the use of any retainer received for post-petition services, without prior approval of the Court.

(d) **Auctioneers Pursuant to § 327(a).** In addition to the requirements of subparagraph (a)(2), the auctioneer's affidavit shall:

(1) Attest that the auctioneer is duly licensed, and include the auctioneer's license number and business address;

(2) Attach a copy of the surety bond referred to in LBR 6005-1(b) intended to cover the assets of the estate; and

(3) Where a blanket bond has been approved by the United States trustee and is on file with the Court, attest whether the affiant has been appointed as auctioneer in any other case, including the case name and case number, and state whether the affiant has or will, within a reasonable period of time, come into possession of property of any other estate in which the affiant has been appointed auctioneer, together with a reasonable estimation of the value of all such property.

(e) **Employment of an Attorney Pursuant to § 327(e).** If the chapter 7 trustee seeks to employ an attorney to pursue the estate's interest in a claim previously held by the debtor, approval of the retention shall be sought by motion on notice pursuant to LBR 9013-3. In addition to service on the United States trustee, the motion shall be served upon the debtor and attorney for the debtor.

Comment

The information required by this Rule shall be submitted at the same time as the information required by Fed. R. Bankr. P. 2014(a).

This Rule supplements Fed. R. Bankr. P. 6003.

RULE 2014-2 ADMISSION TO PRACTICE/DESIGNATION FOR SERVICE

(a) **Attorney Admission.** An attorney who is admitted to practice before the District Court of the Northern District of New York, unless otherwise restricted, is also admitted to practice before this Court.

(b) **Pro Hac Vice Admission.**

(1) **Application.** A member in good standing of the bar of any state or of any United States District Court not otherwise admitted to practice before the Court, may be permitted to practice on motion in this Court for a limited purpose only in a particular case, adversary proceeding, contested matter, or action. An attorney seeking admission pro hac vice shall provide an original certificate of good standing, as evidence of admission to the bar of the highest court of any state or of any United States District Court, and shall pay the required administrative fee. The application, original certificate of good standing, proposed order and a check made payable to the District Court Clerk shall be delivered in paper format to the Bankruptcy Court Clerk

(c) **Limited Admission as Student Practitioner.** A law student approved as a "Student Practitioner" may, under the supervision of an attorney and with prior Court approval, appear on behalf of a debtor who has completed and signed the Student Practice Authorization Form. The completed Student Practice Authorization Form shall be filed in the case pending before the Court.

(1) **Attorney Supervision.** The attorney who supervises a student shall:

(A) Be a member in good standing of the bar of the United States District Court for the Northern District of New York;

(B) Assume personal professional responsibility for the student's work;

(C) Assist the student to the extent necessary;

(D) Appear with the student in all proceedings before the Court unless his or her presence is waived by the Court; and

(E) Indicate in writing his consent to supervise the student on the prescribed application form for appearance as a Student Practitioner.

(2) **Student Eligibility.** In order to appear, the student shall:

(A) Be enrolled in a law school approved by the American Bar Association;

(B) Have completed legal studies amounting to at least three (3) semesters, or the equivalent;

(C) Be recommended by either the dean or a faculty member of his or her law school as a Student Practitioner, which recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk;

(D) Neither ask for, nor receive any compensation or remuneration of any kind for the services performed from the person on whose behalf they are rendered, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services. Neither the student, nor anyone on the student's behalf, shall seek recovery of attorneys' fees from an adverse party for the services rendered by the student as a student practitioner, except for the successful prosecution of a willful violation of the automatic stay or of the discharge injunction pursuant to §§ 362 and 524 and for the defense of an § 523(a)(2) nondischargeability action;

(E) Certify in writing that the student is familiar with the federal procedural and evidentiary rules as well as these rules; and

(F) Complete and file a Student Practice Authorization Form with the Court together with a proposed order for appearance as a Student Practitioner in the bankruptcy case and/or adversary proceeding in which the client consent has been obtained.

(3) **Permitted Student Services.** The Student Practitioner may:

(A) Appear as counsel in Court or at other proceedings when consent of the client and the supervising attorney has been filed and when the Court has approved the student's request to appear in the particular case;

(B) Prepare and sign affidavits, motions, petition, answers, objections, replies, memoranda and legal briefs, and other documents (collectively, "Documents") in connection with any matter in which the student has met the conditions of subparagraph (A) above. The Documents must also be signed by the supervising attorney with the original maintained in the case file.

(4) **Term of Student Admission.** A Student Practitioner whose application has been approved may continue to appear in a particular case as a Student Practitioner until the student has graduated from law school and is formally admitted to the bar or until termination by the Court. The Court sua sponte may terminate a Student Practitioner's right to appear at any time without notice of hearing and without showing of cause.

(d) **Designation for Service.** A Court may require an attorney who does not have an office in the Northern District of New York to designate a resident member of the bar of the Northern District of New York for service of process or papers.

RULE 2015-1 DEBTOR IN POSSESSION DUTIES

(a) **Monthly Statement of Operation Required in a Chapter 7 (Operating), Chapter 11 and Chapter 12 Case.** The operating report mandated by §§ 704(a)(8), 1106 and Fed. R. Bankr. P. 2015(b) must be filed monthly and, in addition, must be served upon the United States trustee, any governmental unit charged with responsibility for collection or determination of any tax arising out of the operations, and shall be served upon any official committee or its attorney.

(1) **Signature.** An operating report filed in accordance with paragraph (a) of this Rule must be signed by the debtor in possession, or if applicable, the chapter 7 trustee or § 1104 trustee. By signing the operating report, the debtor in possession or trustee verifies the accuracy of the information contained therein.

(b) **Monthly Statement of Operation Required in a Chapter 13 Business Case.** The operating report mandated by Fed. R. Bankr. P 2015(c)(1) must be filed monthly and, in addition, must be served upon the United States trustee, and any governmental unit charged with responsibility for collection or determination of any tax arising out of the operations.

(1) **Signature.** An operating report filed in accordance with paragraph (b) of this Rule must be signed by the debtor. By signing the operating report, the debtor verifies the accuracy of the information contained therein.

(c) **Requirements for a Chapter 12 or Chapter 13 Debtor Engaged in Business.** If a chapter 12 or 13 debtor is engaged in the operation of a business enterprise, including a family farm pursuant to § 1201, and is required to collect tax or for which the debtor incurs tax liability in the ordinary course of the debtor's business, the debtor shall:

(1) Provide the trustee a summary of business operations on such form as promulgated by the trustee or a copy of the debtor's most recent federal tax return when requested by the trustee and in such intervals as required by the trustee;

(2) Maintain a bank account that serves solely as a separate tax account ("Tax Account") for the deposit of all tax funds (including, but not limited to, funds held in trust for an employee's withholding tax, sales tax, and employer business tax, with the exception of income taxes) that may be collected by the debtor and for which the debtor may become liable during the pendency of this case. Such tax funds are to be withdrawn from the Tax Account only for the remittance to the appropriate taxing authority or to a federal tax depository;

(3) Contemporaneous with the payment of any salary paid to an employee of the debtor, deposit that portion of such salary as is required to be withheld for social

security tax and the employer's portion of social security tax and disability and unemployment insurance taxes to the Tax Account;

(4) If the debtor is required to collect sales tax, deposit the sales tax in the Tax Account not later than the Monday following each week for that week's sales tax liability;

(5) Deposit any other tax that the debtor is required to collect, or for which the debtor incurs liability in the ordinary course of the debtor's business (such as federal excise taxes) into the Tax Account not later than Wednesday of the week following the week in which such tax were collected or in which the liability was incurred;

(6) During the pendency of the case, timely file all required federal and state tax returns;

(7) During the pendency of the case, make required periodic deposits of federal and state taxes to a tax depository and provide the appropriate taxing authority with verification that such deposits were made within three (3) days from the date of any such deposit; and

(8) The debtor shall provide proof of compliance with paragraph (b) of this Rule upon request of the trustee.

Comment

This Rule addresses the requirement of filing monthly operating reports in a chapter 7 case when a business is authorized to be operated, in a chapter 11 and 12 case, and in a chapter 13 business case. Monthly Operating Report forms are located at: http://www.justice.gov/ust/r02/index.htm

Pursuant to Fed. R. Bankr. P. 5003(e), counsel is referred to the Clerk's registry for the addresses for the filing of tax returns and remittance of payments.

RULE 2015-2 DEBTOR IN POSSESSION DUTIES – CHAPTER 11 AFFIDAVIT

(a) **Chapter 11 Debtor's Affidavit.** A debtor's affidavit shall be filed in each chapter 11 case and in any case converted to chapter 11 from chapter 7, 12, or 13.

(b) **Contents of Affidavit.** A debtor in possession shall file an original affidavit attesting:

(1) To the nature of the debtor's business and a concise statement of the circumstances leading to its chapter 11 filing;

(2) If the debtor failed to file its summary of schedules (Official Form 206Sum) with the initial filing, a summary of the debtor's assets and liabilities;

(3) A list of all property of the debtor in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents, or secured creditor or agent for any such person, giving the name, address and telephone number of such person and the court, if any, in which a proceeding relating thereto is pending;

(4) If the debtor failed to file its Schedule "A/B" (Assets – Real and Personal Property) or Schedule "G" (Executory Contracts and Unexpired Leases) with the initial filing, a list of real and personal property owned, under lease or, held under other arrangement, including, but not limited to the property from which the debtor operates its business; and

(5) If the debtor failed to file its statement of financial affairs with the initial filing, the location of its substantial assets, the location of its books and records, and the nature, location and value of assets, if any, held by the debtor outside the territorial limits of the United States.

(c) **Additional Information Required if Business Continues.** If the debtor intends to continue the operation of its business, the affidavit shall so state and set forth the information described in subparagraphs (1) – (3) below:

(1) The estimated amount of the weekly payroll payable to employees (exclusive of any officer, partner, stockholder, and director) for the thirty (30) day period following the filing of the chapter 11 petition;

(2) The amount paid and proposed to be paid for services for the thirty (30) day period following the filing of the chapter 11 petition:

(A) If a corporation, to any officer, stockholder, and director;

(B) If an individual, partnership, limited liability company, or limited liability partnership, to the individual or any member of the partnership or limited liability entity; and

(C) If a consultant has been retained, to such consultant; and

(3) A schedule setting forth for the thirty (30) day period following the filing of the petition: estimated cash receipts and disbursements, net cash gain or loss, accrued but unpaid obligations, other than professional fees, and any other information relevant to an understanding of the foregoing.

(d) **When to File the Affidavit.** In a voluntary chapter 11 case, the affidavit pursuant to this Rule shall be filed within seven (7) days of the filing of the petition. In an involuntary chapter 11 case, the affidavit shall be filed within seven (7) days after entry of the order for relief or after the filing of debtor's consent to the petition, whichever is earlier.

(e) **Waiver of Requirements.** The Court may waive the requirements of this Rule, except for subparagraphs (1) and (2) of paragraph (b), upon application of the debtor and notice to the United States trustee, if it determines that compliance with this Rule is impracticable.

Comment

This Rule supplements Fed. R. Bankr. P. 1007 and should be read in conjunction with LBR 1019-1(e) when a case converts to chapter 11.

RULE 2016-1 COMPENSATION OF PROFESSIONALS IN A CHAPTER 11 CASE

(a) **Applications for Compensation.** Applications for compensation shall comply with all requirements, including those related to format, outlined in Fed. R. Bankr. P. 2016(a) and the United States Trustee Fee Guidelines, which are available at www.justice.gov/ust/r02.

(b) **Filing and Paper Copy Requirements.** Applications for compensation are to be filed electronically. A paper copy marked "CM/ECF Case - Chambers Copy" is to be provided to the Court. In addition, the United States trustee is to be served with a paper copy of the application. Each application shall include:

(1) The date the applicant was appointed by the Court and, if applicable, the method of compensation, the maximum compensation, and any rate of compensation fixed in the order appointing applicant;

(2) A statement as to whether all services for which compensation is requested were performed for, or on behalf of, the party retaining applicant or on behalf of any other person or paraprofessional;

(3) A concise summary of the professional and paraprofessional services rendered, including:

(A) A factual explanation of the nature and extent of services performed, the results obtained, and the size of the estate; and

(B) For an interim fee request, an explanation of the status of the case, a projection as to the percentage of work that the current application covers in relation to the overall case, and any other matters that will enable the Court to determine the reasonable value of such services;

(4) An exhibit consisting of contemporaneous daily time records for all professionals and paraprofessionals, arranged in a project billing format as suggested by the United States Trustee Fee Guidelines. Applications seeking compensation less than $10,000.00, exclusive of expenses, are exempt from the project billing requirement. Entries in the time records must:

(A) Be legible and applicant shall define any codes, symbols, abbreviations, or non-legal technical terms used in the time records; and

(B) Be sufficiently specific to permit the Court to evaluate the reasonableness of the time allocated for the particular service. Failure to separately identify the time expended on each service with a single time entry may provide a basis for the Court to deny compensation for that service.

(5) A statement specifying the amounts, if any, within the total request that were previously received from any source, including guarantors, with or without Court authorization;

(6) A statement as to whether applicant has entered into any agreement to fix fees or to share compensation as prohibited by 18 U.S.C. § 155 and 11 U.S.C. § 504;

(7) A statement describing the estate's ability to pay the fees requested and the status of fees owed to other administrative claimants of equal priority to the extent the professional is employed pursuant to §§ 327 or 1103 and compensation is sought from the estate and not a third party;

(8) A specific description of the basis and justification for the request in terms related to the benefit of the services to the estate to the extent an enhancement of fees beyond those supported by the time records is sought; and

(9) An itemization of expenses incurred, conforming to paragraph (c) of this Rule.

(c) **Reimbursement of Expenses.** All requests for reimbursement of expenses shall be separately supported in the application by a detailed, itemized listing. Each category of expenses shall be separately totaled. A summary of all expense categories shall be included, which total should equal the aggregate request.

(1) The following expenses may be reimbursable if adequately supported in the application:

(A) Duplication of documents at actual cost at a rate not to exceed $0.20 per page or, if the photocopies were made by an entity unrelated to the applicant, at the rate charged by the entity as supported by a photocopy of the invoice appended to the application;

(B) Computer legal research at a rate not to exceed the cost of said service incurred by the applicant;

(C) Long distance travel expenses, if adequately described, including the mode of transportation, the date, destination, and purpose of the trip, and, if by automobile, the number of miles traveled, the rate used, and substantiation of incidental expenses, including lodging, tolls, and parking; and

(D) Facsimile transmission charges for outgoing transmissions to long distance numbers, reimbursable at either the actual toll charge or $1.00 per page.

(2) The applicant shall certify that all expenses for which reimbursement is sought were incurred on behalf of the client and no other person and that the

reimbursement, if allowed in full, will not exceed the amount that applicant paid for the items.

(3) The following expenses may be considered unreasonable unless separately justified through a detailed itemization and explanation by the applicant as to why they were necessary and verification that the hourly rates charged by the professionals do not support said expenses as an overhead item within the applicant's office:

(A) Travel to and from the courthouse within a twenty-five (25)-mile radius;

(B) Any charges for typing, word processing and clerical assistance;

(C) A travel mileage rate in excess of that which the Administrator of General Services has prescribed for official travel of employees of the Federal Government, as amended from time to time, and set forth in http:/www.gsa.gov/portal/content/100715; and

(D) Any meal expenses incurred while on long-distance travel.

(d) **Certification.** Each application for compensation shall be accompanied by a separate certification of the person or entity on whose behalf the applicant is employed, including the debtor, creditors' committee, or trustee. This certification must reflect both alternative options in substantially the form set forth below:

I, [person or representative of entity], certify that I have reviewed the [title of fee application] filed by [applicant], and

Check one:

☐ I do not object to allowance of the application and payment of fees and expenses in full as the services rendered and fees charged appear reasonable;

or

☐ I object to the application and to payment of the fees and expenses in full in the amounts and for the reasons set forth below:

Dated: _____

[Person or Representative of Entity, with Title]

(g) **Applications for Final Compensation in Chapter 11 Cases.** At the time of the hearing on the approval of the disclosure statement or at some later time, the Court may fix the time by which all applications for final compensation must be filed. Absent such directive, all applications for allowance of fees and expenses must be filed prior to or with the report of substantial consummation.

(1) **Estimate of Future Services.** An application for final compensation may include a reasonable estimate of the hours it is anticipated will be expended and the expenses incurred through the closing of the case. The estimate shall identify the specific tasks to be performed with an allocation of hours for each task.

(2) **Supplementary Exhibit.** Any estimate of future services and expenses shall be subject to later substantiation in the form of a supplementary exhibit, to be filed both on the return date of the hearing on the application for final compensation and with the application for final decree. The exhibit shall be filed in conformity with subparagraph (b)(4) governing professional compensation and Fed. R. Bankr. P. 2016(a). The supplementary exhibit must account for the actual services, hours and expenses which were estimated in the previously submitted application.

Comment

This Rule provides a procedure for the Court to fix final compensation of professionals in order to determine the total administrative expenses chargeable to the estate while at the same time compensate and monitor services required after confirmation through the closing of the case. Paragraph (e) is intended to clarify that professionals who are required to be appointed by the Court in order to be paid must receive Court approval of fees and expenses for services rendered during the case, before the case is closed. Failure to file the supplementary exhibit required by subparagraph (e)(2) in a timely manner may result in an order of the Court directing a party to disgorge compensation allowed on the basis of previously submitted estimates.

Compensation of auctioneers is addressed by LBR 6005-1.

The travel mileage rate changes referred to in subparagraph (c)(3)(C) of this Rule are available on the Court's website: www.nynb.uscourts.gov. Expenses specifically addressed in this Rule are not intended to be either an exclusive or exhaustive list of potentially reimbursable expenses.

RULE 2016-2 COMPENSATION OF PROFESSIONALS IN CHAPTER 13 CASE

(a) **Compensation.** In a chapter 13 case, the plan shall set forth the entire attorney's fee to be paid by or on behalf of the debtor in connection with the case including any amount paid pre-petition as a retainer and the amount to be paid through the plan. The trustee shall review the attorney's fee charged in each case and object to confirmation if the fee sought is unreasonable. Confirmation of the chapter 13 plan shall constitute Court approval of the attorney's fee. The Court may set a hearing sua sponte to review the attorney's fee requested, which may be scheduled at the same time as the confirmation hearing. By Administrative Order, the Court in each division may set a standard fee chargeable for standard legal services rendered in a chapter 13 case.

(b) **Notice to All Parties in Interest.** Notwithstanding any other provision of this Rule, if the compensation for debtor's counsel is an amount greater than one-half of the amount to be funded through the chapter 13 plan, the compensation is subject to further review and approval after notice and a hearing as provided for under Fed. R. Bankr. P. 2002(a)(6).

(c) **Fed. R. Bankr. P. 2016(b) Statement.** In addition to the disclosure requirements of Fed. R. Bankr. P. 2016(b), if counsel has represented the debtor in a prior bankruptcy case commenced within eight (8) years of the current case, any application submitted pursuant to paragraph (d) of this Rule, as well as the original 2016(b) statement, shall disclose the date of the prior filing(s) and the attorney's fees paid in connection with such prior filing(s). Unless otherwise ordered, when additional compensation for postpetition services is approved by the Court, said compensation shall be paid through the plan.

(d) **Application for Fees in Excess of Those Approved Under the Plan.** Any additional attorney's fees and expenses sought to be charged beyond those disclosed in the initial statement filed pursuant to Fed. R. Bankr. P. 2016(b) and/or approved by the confirmation order may be charged to the debtor only upon Court order, based upon prior application after notice and a hearing. The application shall disclose the fee allowed in the case to date, including amounts allowed to any prior counsel representing the debtor, the amount of allowed fees actually paid through the date of the application, and detail the specific services for which additional compensation is sought.

RULE 2016-3 REQUIRED SERVICES TO BE RENDERED BY DEBTOR'S ATTORNEY

(a) **Debtor Representation.** Unless otherwise ordered by the Court, an attorney representing a debtor shall be the attorney of record and represent the debtor until the case is administratively closed.

(b) **Required Attorney Duties in a Chapter 7, Chapter 12 and Chapter 13 Case.**

(1) **Retainer Agreement.** Absent special circumstances approved by the Court, an attorney representing the debtor in chapter 7, chapter 12 or chapter 13 proceeding in this district shall have a written retainer agreement that sets forth the fee arrangement and comprehensive services to be performed for the debtor in which the attorney agrees to:

(A) Analyze the client's financial situation, and advise and assist the client in determining whether to file a petition under the Bankruptcy Code;

(B) Prepare and file the petition, all required lists, schedules and statements, as well as any amendments that may be necessary or appropriate;

(C) File the certificate required from the individual debtor from an approved nonprofit budget and credit counseling agency for pre-petition credit counseling;

(D) File the debtor's payment advices together with the "Payment Advice Form" (Payment Advice Form);

(E) Appear personally and represent the debtor at any scheduled meeting of creditors under § 341, unless otherwise ordered by the Court;

(F) Amend any list, schedule, statement, and/or other document required to be filed with the petition as may be necessary or appropriate;

(G) Advise the debtor with respect to any reaffirmation agreement; negotiate, prepare and file reaffirmation agreements if in the best interest of the debtor; and attend all hearings scheduled on any reaffirmation agreement signed by the debtor;

(H) Prepare and file any motion as may be necessary or appropriate including but not limited to a motion to avoid a lien on exempt property, to obtain credit, to sell or abandon property, and to assume or reject a lease;

(I) Remove involuntary wage garnishments and/or voluntary wage assignments, as appropriate;

(J) Compile and forward to the trustee and the United States trustee any documents and information requested;

(K) Consult with the debtor and if there is a valid defense or explanation, respond to a motion for relief from the automatic stay;

(L) File the debtor's certification of completion of instructional course concerning financial management (Official Form 423);

(M) Represent the debtor in any adversary proceeding filed in the case; and

(N) Disclose any agreement and fee arrangement regarding the potential retention of co-counsel.

(2) **Chapter 7 Case.** In addition to the services identified in subparagraph (b)(1) above, and as may be needed or warranted by the facts of the case, the attorney retained in a chapter 7 case shall prepare and file a motion under § 722 to redeem exempt or abandoned personal property.

(3) **Chapter 12 and Chapter 13 Cases.** In addition to the duties identified in subparagraph (b)(1) above, and as may be needed or warranted by the facts of the case, the attorney retained in a chapter 12 or chapter 13 case shall:

(A) Attend the original and any adjourned confirmation hearing and address all objections to confirmation;

(B) Negotiate the value of secured claims or, as necessary, represent the debtor at valuation hearings in connection with the confirmation hearing;

(C) Prepare and file the necessary pleadings to partially or wholly avoid mortgage liens against the debtor's real property;

(D) Prepare necessary pre-confirmation amendments and post-confirmation modifications to the plan;

(E) Timely review all filed proofs of claim, and object to and file proofs of claim as appropriate;

(F) Oversee the filing of all operating reports in chapter 13 and any required in chapter 13;

(G) Represent the debtor in connection with motions for dismissal or conversion;

(H) File the appropriate affirmation required under Rule 4004-1(b) to permit the inference that the debtor is entitled to a discharge; and

(I) Attend any discharge hearing scheduled and address all objections to discharge.

Comment

With reference to subparagraph (b)(3)(E) and the timely review of claims, practitioners are referred to LBR 3007-1(b) for the time by which claim objections are to be filed in chapter 13 cases.

RULE 2091-1 ATTORNEYS – WITHDRAWAL OTHER THAN BY SUBSTITUTION

(a) **Debtor's Attorney – Withdrawal Other Than By Substitution**. Withdrawal of an attorney who has appeared as the attorney of record for a debtor must comply with applicable rules of professional conduct. An attorney who has appeared as the attorney of record for a debtor may be relieved of representation only by order of the Court after notice and a hearing. Withdrawal may be permitted upon submission of an affidavit stating satisfactory reasons for withdrawal and a statement of the status of the case. Notice of the requested withdrawal in every instance shall be given to the debtor, the United States trustee, the trustee, any § 1104 trustee, any appointed committee, and any party having filed a notice of appearance.

(b) **Other Attorneys of Record.** Withdrawal of an attorney of record other than debtor's counsel must comply with applicable rules of professional conduct.

(1) An attorney who has appeared in a case or adversary proceeding, other than for the limited purpose of receiving notices, may be relieved of representation only by order of the Court after notice and a hearing, unless substitute counsel has made an appearance for that party. Counsel will not ordinarily be allowed to withdraw if withdrawal would delay the progress of an adversary proceeding or contested matter.

(2) An attorney who has appeared for the limited purpose of receiving notices, may be relieved of representation upon the filing of a written notice. Notice of the withdrawal shall be given to debtor's counsel or the debtor if pro se, the United States trustee, the case trustee, any § 1104 trustee, any appointed committee, and any party having filed a notice of appearance. Withdrawing counsel shall file a certificate of service in accordance with this Rule.

Comment

Attorneys shall be governed by applicable rules governing their practice, which for New York counsel are the New York Rules of Professional Conduct (22 NYCRR Part 1200).

RULE 2092-1 ATTORNEYS – SUBSTITUTION

(a) **Substitution.** A debtor's attorney may be substituted by order of the Court after such notice and hearing as the Court may direct. Substitution may be allowed upon submission of an affidavit stating satisfactory reasons for substitution and a statement of the status of the case, or, upon the submission of a stipulation signed by debtor(s), the attorney to be relieved, and the substituted attorney.

(b) **Other Attorneys of Record.** Substitution of an attorney of record other than debtor's counsel may be accomplished by providing written notice to the Court, all interested parties and any party having filed a notice of appearance. Substituted counsel shall file a certificate of service in accordance with this Rule.

RULE 3001-1 CLAIMS AND EQUITY SECURITY INTERESTS – ASSET CASE

In a chapter 11, 12 and 13 case, and in a chapter 7 case noticed as an asset case, an entity filing a proof of claim shall properly identify the case to which such claim relates by stating the applicable case name and number.

An amended or additional proof of claim filed after the bar date shall be served upon the trustee and upon the debtor's attorney.

Comment

Proper identification of the debtor estate by name and case number is essential for the Clerk to properly process a claim.

A filed claim and any documents attached thereto must not contain any personal identifiers and must comply with Fed. R. Bankr. P. 9037 and LBR 9037-1.

RULE 3001-2 CLAIMS AND EQUITY SECURITY INTERESTS – NO ASSET CASE

If a chapter 7 case is filed as a "no asset" case, pursuant to the Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline, no proof of claim shall be filed, unless the sole purpose for filing such proof of claim is to satisfy the requirements of § 521(a)(6). If the chapter 7 trustee determines that there are assets from which a dividend might be paid, the Clerk shall set a deadline for filing proofs of claim and issue a notice of the time to file claims, as required under Fed. R. Bankr. P. 2002(f).

RULE 3001-3 ELECTRONIC SUBMISSION OF PROOF OF CLAIM

Without the necessity of becoming a registered user, any claimant or the claimant's agent may utilize the feature available on the court's website for electronic submission of a proof of claim form. Any proof of claim filed electronically, using this court's website, shall have the same force and effect as if the individual signed a paper copy of the document.

RULE 3002-1 THIRD PARTY PROCESSING OF CLAIMS (CLAIMS AGENT)

(a) **Request for Claims Agent.** Upon motion, the Court may permit a third party to perform the docketing and processing of claims at the estate's expense.

(b) **Docketing of Claims Via the CM/ECF System.** A claims agent shall stamp the front of each claim with the date received, scan the claim and supporting documentation to PDF format, and docket the claim using the CM/ECF system. Claims shall be docketed by the claims agent within twenty-four (24) hours of receipt.

(c) **Transfer of Claims.** A claims agent shall process all transfer of claims forms and provide notice of the transfer as required by Fed. R. Bankr. P. 3001(e). A claims agent shall give notice of the filing of a claim in the name of a creditor by a debtor or trustee as required by Fed. R. Bankr. P. 3004.

(d) **Retention of Original Claims.** The claims agent shall retain all original claims until the case is closed unless the Court orders otherwise. Upon the closing of a case, the Court may direct the claims agent to transmit claims to the Federal Records Center for archiving.

RULE 3007-1 CLAIMS AND OBJECTIONS TO CLAIMS

(a) **Time for Service of Objections to Claims.** Objections to all claims must be served upon the claimant not later than 30 days prior to the hearing.

(b) **Service of Objections to Claims.** In addition to the service required by Fed. R. Bankr. P. 7004 and 9014, a claim objection must be served upon the claimant at the address (and in care of the individual) designated in Box 3 on the proof of claim (Official Form 410) and a certificate of service must be filed.

(c) **Claim Objections in Chapter 11 Cases.** Unless the Court orders otherwise, objections to claims in a chapter 11 case must be filed and served not later than fourteen (14) days after the entry of an order of confirmation.

(d) **Claim Objections in Chapter 12 and 13 Cases.** Unless the Court orders otherwise, objections to claims in a chapter 12 and 13 case must be filed and served within forty-five (45) days of the trustee's service of the "Notice of Claims Filed and of Trustee's Intent to Pay Claims as Listed." The trustee shall file the Notice of Claims Filed and of Trustee's Intent to Pay Claims as Listed.

(e) **Objection to Additional or Amended Claim.** Unless the Court orders otherwise, if an amended claim is filed or a claim is filed pursuant to LBR 3001-1, objections must be filed and served within forty-five (45) days of service by the trustee of the Notice of Additional or Amended Claim.

(f) **Secured Claims.** An entity holding an allowed secured claim that obtains relief from the automatic stay in a chapter 13 case shall not continue to receive the payments provided for in the confirmed plan once the trustee receives the order granting the relief. Funds to be distributed by the trustee on the allowed claim may recommence only upon the consent of the parties or upon application and order of the Court.

(g) **Amended Secured Claims.** The affected creditor referred to in paragraph (f) of this Rule shall retain the right to file an amended claim. The amended claim shall state:

(1) The date and terms of the disposition of the collateral;

(2) The name of the transferee of the collateral;

(3) The consideration received; and

(4) A detail of all charges claimed in retaking, holding, and disposing of the property.

Comment

Paragraph (c) of this Rule sets a date by which objections to claims must be filed in chapter 11 cases in order to expedite the resolution of administrative matters remaining after confirmation. In many chapter 11 cases, a plan proponent should and will file objections to claims earlier and well in advance of confirmation in order to have objections resolved prior to confirmation.

RULE 3012-1 VALUATION OF COLLATERAL

Unless the Court orders otherwise, within fourteen (14) days of a written request by a party in interest, the debtor must make available any item of personalty for appraisal. The appraisal shall be conducted at the debtor's residence or place of business absent agreement of the parties. It shall be the affirmative duty of the debtor to contact the party in interest requesting the appraisal to arrange for the appraisal or to seek a protective order.

RULE 3015-1 CHAPTER 13 – PLAN

(a) Format of Plan. A debtor shall file a chapter 13 plan using the Model Plan.

(b) Notice of Plan and the Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan.

(1) Plan Filed with Petition. If the plan is filed with the petition, the Bankruptcy Noticing Center shall furnish copies of the plan to all parties in interest and notice the time fixed for filing objections to and the hearing to consider confirmation of the plan.

(2) Plan Filed after Petition. If the plan is filed after the petition, the debtor shall serve a copy of the plan and Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan upon all parties in interest not later than 28 days prior to the confirmation hearing and, if necessary, adjourn the hearing date to provide the requisite 28 days' notice. Not later than seven (7) days prior to the confirmation hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.

(c) Inclusion in Plan of Relief Governed by Fed. R. Bankr. P. 7001 (Adversary Proceeding) or Fed. R. Bankr. P. 9014 (Contested Matter).

(1) Allowed Contested Matters. If a plan includes a provision for relief that is governed by Fed. R. Bankr. P. 7001 or Fed. R. Bankr. P. 9014, such relief shall be obtained by separate adversary proceeding or motion except to the extent the plan proposes to do any of the following:

(A) Value collateral to establish the amount of a secured claim;
(B) Set the interest rate for a secured claim; or
(C) Assume and/or reject an unexpired lease or executory contract,

each of which shall be deemed an "Allowed Contested Matter".

(2) Notice Required If Plan Includes Allowed Contested Matter. If the plan includes an Allowed Contested Matter as set forth in subparagraph (c)(1), a copy of the plan and Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan must be served on all affected creditors by the debtor pursuant to Fed. R. Bankr. P. 7004. The Debtor shall promptly file a certificate of service evidencing compliance with the Rule but in no event later than seven (7) days prior to the confirmation hearing.

(d) Certification of Compliance with this Rule. The debtor shall certify in all cases proper notice and service in compliance with this Rule by filing, not later than fourteen (14) days prior to the confirmation hearing, a Certification Pursuant to Local Bankruptcy Rule 3015-1.

(e) Disbursement of § 1326 Payments.

(1) The debtor shall commence making plan payments to the trustee within thirty (30) days after the order for relief or the order converting the case to chapter 13. Said payment shall include the amounts necessary to pay pre-confirmation adequate protection payments plus the statutory trustee's fees. The debtor shall not reduce plan payments to the trustee under § 1326(a)(1)(C) as a result of these adequate protection payments, without an order of the Court.

(2) A creditor may file a motion requesting a change in the amount of § 1326(a)(1) pre-confirmation payments pursuant to § 1326(a)(3). Until the creditor's motion is resolved, the trustee shall continue to make pre-confirmation adequate protection payments to such creditor as set forth herein.

(3) The trustee is authorized to pay adequate protection to a secured creditor whose claim is secured by personal property pursuant to § 1326(a)(1) in an amount as set forth in the proposed plan. If the plan does not propose any such payment, then the trustee shall remit on a monthly basis to such creditor an amount equal to 1.5% of the value of the claim proposed to be paid by the debtor through the plan up until confirmation. However, no such payments shall be made to a creditor until a proof of claim is filed. Pre-confirmation adequate protection payments shall be made to the creditors with the trustee's first monthly disbursement within thirty (30) days of the filing of the proof of claim. At the time of such payments, the trustee is authorized to retain an administrative fee for effecting the payments described herein and shall collect such fee at the time of making the payment from the funds on hand with the trustee. The allowed fee shall be equal to the percentage fee established by the Attorney General pursuant to 28 U.S.C. § 586(e)(1)(B) in effect at the time of disbursement. The trustee shall apply each § 1326(a)(1) pre-confirmation payment to the principal outstanding on the creditor's claim.

(4) If the case is dismissed prior to confirmation, the creditor shall receive from the trustee any § 1326 pre-confirmation adequate protection payment due and owing from funds collected by the trustee under § 1326(a)(1)(A), less statutory trustee fees and specifically allowed § 503(b) claims, including debtor's attorney fees.

Comment

The debtor is responsible for ensuring that notice of the plan, the time fixed for filing objections, and the hearing to consider confirmation of the plan be given in accordance with § 342(c)(2), as applicable, regardless of whether the plan is filed with or after the petition.

Paragraph (c) recognizes that it is inappropriate and may be considered bad faith to include as a plan provision relief that should be the subject of a separate adversary proceeding or motion. *See United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1382 (2010) (referring to a plan provision that discharged a student loan).

RULE 3015-2 CHAPTERS 12 AND 13 – OBJECTIONS TO CONFIRMATION

(a) **Service of Objection.** An objection to confirmation must be filed and served on the debtor, debtor's attorney, and the trustee not later than seven (7) days before the scheduled hearing on confirmation.

(b) **Appearance Required Upon Objection.** If an objection is filed, all parties or their counsel shall be present at the confirmation hearing. If the objecting creditor or creditor's counsel fails to appear at the confirmation hearing, the Court may treat the objecting party's absence as a waiver of the objection. If debtor's counsel fails to appear, the Court may deny confirmation.

(c) **Required Contents.** An objection to confirmation shall:

(1) Specify the number and letter section(s) of the Bankruptcy Code upon which the objection is grounded;

(2) Allege the specific facts that support the objections;

(3) Summarize the creditor's claim(s) against the debtor, including the alleged classification(s) (secured, unsecured, priority or administrative) and the amount of the claim(s); and

(4) Include within the case caption a reference to the document number of the plan or amended plan that is the subject of the objection.

(d) **Separate Pleading Required.** Objections to confirmation may not be combined with any motion seeking affirmative relief. Nothing within this Rule shall be deemed to limit or constrain the Court's authority to issue orders it deems appropriate at the time of a confirmation hearing.

RULE 3015-3 CHAPTERS 12 AND 13 – SUBMISSION AND SERVICE OF CONFIRMATION ORDER

(a) **Preparation of Confirmation Order.** The Order of Confirmation shall be prepared and submitted by the trustee within sixty (60) days of the final hearing on confirmation, unless otherwise ordered by the Court.

(b) **Service of Confirmation Order.** The trustee shall serve the Order of Confirmation by regular first-class mail upon the debtor and any other interested party who makes a written request for service.

RULE 3015-4 CHAPTERS 12 AND 13 – MODIFICATION TO PLAN PRIOR TO AND AFTER CONFIRMATION

(a) Modification of Plan Prior to Confirmation

(1) Format. A debtor seeking to modify a pan prior to confirmation shall use the Model Plan and check the box in the caption to indicate the Chapter 13 Plan is "Amended" (the "Amended Plan") and provide the date thereof.

(2) Procedure. The Amended Plan shall be filed and served on the trustee, the United States trustee, and all creditors that are being detrimentally affected by the proposed modification. The Amended Plan shall be served with Notice of Time Fixed for Filing Objections To and the Hearing to Consider Confirmation of Chapter 13 Plan not later than 28 days prior to the hearing. Not later than seven (7) days prior to the hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.

(3) Objections to an Amended Plan. An objection to confirmation of an Amended plan must be filed and served on the debtor, debtor's attorney, and the trustee not later than seven (7) days prior to the confirmation hearing.

(b) Modification of Plan After Confirmation.

(1) Format. A debtor seeking to modify a plan after confirmation (the "Modified Plan") does not need to use the Model Plan. The Modified Plan shall set forth only those terms of the confirmed Chapter 13 plan that the proponent seeks to modify.

(2) Procedure. A Court order is required to modify a confirmed plan. A debtor, trustee, or holder of an allowed unsecured claim seeking to modify a confirmed plan shall:

(a) File the Modified Plan;

(b) File a notice of motion and a motion to modify confirmed plan;

(c) Serve the notice of motion on all creditors, and serve the notice of motion and motion to modify plan on the trustee, the debtor, and, if the debtor is not the movant, the debtor's attorney; and

(d) File a certificate of service not later than seven (7) days prior to the return date of the motion.

(3) **Notice of Motion.** The notice of motion to modify confirmed plan shall include the following disclosures:

(a) A clear statement of the proposed modification, with specific reference to the provisions of the previously filed plan that are being modified;

(b) Any change in the dividend to be paid to unsecured creditors, indicating the specific percentage change in the dividend;

(c) Any change in the time for the final payment under the plan;

(d) Any change in the plan payment;

(e) Any effect on the specific treatment of secured creditors under the plan; and

(f) The exact reasons for the modification, including specific and detailed changes in the budget of the debtor, or other circumstances of the debtor that would justify the modification.

(4) **Proposed Order Modifying Confirmed Plan.** Any proposed order that modifies a confirmed plan shall be captioned Order Modifying Confirmed Plan and must include the modified terms of the plan as requested in the motion to modify confirmed plan as approved by the Court.

RULE 3015-5 CHAPTER 13 – ADMINISTRATION OF PAYROLL DEDUCTION ORDER

(a) **Implementation of Payroll Deduction Order.** A proposed payroll deduction order shall be prepared and uploaded by the debtor's attorney or the trustee. A payroll deduction order shall contain the debtor's name, case number, redacted social security number (last four digits), employer's name, employer's address, the amount of the deduction, and the address where plan payments should be sent.

(b) **Termination of Payroll Deduction Order.** Upon completion of a plan, the debtor's attorney or the trustee shall prepare and upload a "cease deduction order."

(c) **New or Amended Payroll Deduction Order.** If the debtor changes employment, the debtor's attorney or the trustee shall prepare and upload a "cease deduction order" and then a new payroll deduction order. If there is an approved modification to the plan that changes the amount of the current payroll deduction, the debtor's attorney or trustee shall prepare and upload an amended payroll deduction order, which shall be clearly marked "amended" and that references, by document number within the order title, the original payroll deduction order being amended.

RULE 3016-1 CHAPTER 11 – PLAN

Except in a case where the debtor is an individual, the jurisdictional statement in a chapter 11 plan shall provide that the Court will retain jurisdiction until there is substantial consummation of the plan. The Court may find a plan to be substantially consummated at the time the first payment is made pursuant to the plan if the other conditions of § 1101(2) are satisfied.

RULE 3016-2 DISCLOSURE STATEMENT

The first page of a proposed disclosure statement submitted for Court approval shall contain the following language, or words of similar import, in boldface type:

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

RULE 3017-1 AMENDED DISCLOSURE STATEMENT – CONDITION OF APPROVAL

(a) **Amended Disclosure Statement.** The amended disclosure statement, along with a red-lined version showing changes to the last filed disclosure statement, shall be filed and served on the United States trustee and other parties in interest, with copies provided to chambers..

(b) **Condition of Approval.** Except for good cause shown, no order shall be entered approving the disclosure statement unless all operating statements have been filed and served pursuant to Fed. R. Bankr. P. 2015(a)(3) and LBR 2015-2.

(c) **Plan in Small Business Case Intended to Operate as Disclosure Statement.** If the proponent of a plan in a small business case (see § 101(51C)) intends the plan to jointly serve as the disclosure statement, paragraphs (a) and (b) of this Rule shall apply to any amendments of the plan.

RULE 3018-1 BALLOTS – VOTING ON CHAPTER 11 PLAN

(a) **Filing and Review.** Creditors and equity security holders shall return a Ballot for Accepting or Rejecting Plan (Official Form 314) to the plan proponent who shall retain the ballots and make them available for review, upon request, by any party in interest.

(b) **Certification.** At least seven (7) days prior to the hearing on confirmation, the plan proponent shall file a written certification of the amount and number of allowed claims or allowed interests of each class accepting or rejecting the plan, in accordance with § 1126. The ballots must be filed as an exhibit to the certification. The certification shall be served by the plan proponent upon the debtor, § 1104 trustee, if any, the United States trustee, and any committee. If an issue is raised as to the proponent's compliance with § 1126, the Court may hold an evidentiary hearing prior to any confirmation hearing.

(c) **Failure to File Certification and Ballots.** Failure to timely comply with paragraph (b) of this Rule is cause for the Court to adjourn the hearing on confirmation.

RULE 3020-1 CHAPTER 11 – CONFIRMATION OF A PLAN

(a) **Objection to Confirmation.** An objection to confirmation of a chapter 11 plan shall be served and filed not later than seven (7) days prior to the first date set for the confirmation hearing, unless otherwise ordered by the Court.

(b) **Withdrawal of Objection.** If an objection to confirmation of a chapter 11 plan is withdrawn or abandoned, the Court may deny confirmation of the plan unless the plan's proponent, or its counsel, states on the record or by affidavit the consideration promised or given, if any, directly or indirectly, for the withdrawal or abandonment of the objection.

(c) **Motion to Confirm by "Cram-Down."** If the plan proponent intends to seek confirmation of the plan as to one (1) or more classes pursuant to § 1129(b), the proponent shall file and serve upon the member or members of such class or classes, not less than seven (7) days prior to the confirmation hearing, notice of its intent to seek confirmation of the plan as to such class or classes pursuant to § 1129(b). Such notice shall be accompanied by an affidavit setting forth the facts and circumstances necessary to establish that the plan's treatment of such class or classes complies with the applicable provisions of § 1129(b).

RULE 3021-1 CHAPTER 11 – AFFIDAVIT OF POST-CONFIRMATION DISBURSEMENTS

(a) **Filing Requirements.** The plan proponent or the disbursing agent defined by the plan or designated by the Court shall file and serve upon the United States trustee an affidavit reporting all cash disbursements for each month after confirmation of the plan, until such time provided in paragraph (b) of this Rule, unless the Court orders otherwise.

(b) **Time for Filing.** The affidavit shall be filed on the 20th of the month following the reported month. Unless the Court orders otherwise, the duty to file the monthly affidavit shall cease upon entry of the final decree pursuant to Fed R. Bankr. P. 3022, the conversion of the case to another chapter, or the dismissal of the case.

(c) **Contents.** The monthly affidavit shall disclose all disbursements, including but not limited to:

(1) The total amount of payments made for the reported month pursuant to the plan, with a subtotal of payments for each class defined within the plan, and a statement explaining whether the total amount paid to the class complies with the terms of the plan, whether the amount paid was in a lesser amount, or whether there is a good faith dispute about the amount owed;

(2) The administrative expenses paid; and

(3) The total of cash disbursements made.

Comment

The filing requirements of paragraph (a) of this Rule should be satisfied through the filing of Debtor's Post-Confirmation Quarterly Report , as provided by the United States trustee and made available at www.justice.gov/ust/r02.

RULE 3022-1 CHAPTER 11 – FINAL REPORT AND MOTION FOR A FINAL DECREE

(a) Report of Substantial Consummation in Chapter 11 Case. The plan proponent shall file a report of substantial consummation that provides a basis for the Court to find that the plan proponent has satisfied the criteria of § 1101(2).

(1) Motion for Final Decree. The report of substantial consummation shall be accompanied by a motion for a final decree on notice to all creditors and parties in interest. Unless the Court orders otherwise, the final report, a proposed final decree, the cancelled checks, (or other evidence of payment in a form ordinarily provided by the payor's bank) representing the distributions made pursuant to the confirmed plan, and the supplementary exhibit to the application for final compensation required by LBR 2016-1 are not required to be served with the motion, but must be filed. In an individual chapter 11 case, the motion shall include the certification referenced in paragraph (c) of this Rule.

(2) Final Decree. Based on the information received, the Court may, in its discretion, ascertain whether the case has been fully administered and entertain the entry of the proposed final decree closing the case.

(b) Time for Filing Report of Substantial Consummation in Chapter 11 Case.

(1) Non-Individual Chapter 11 Case. The Court may require the report of substantial consummation to be filed as early as the time that all checks have cleared as to the first payments made under the plan. In no event shall the report be filed later than 180 days after the entry of a final order confirming a plan unless the Court, for cause shown, extends the time upon motion filed and served within the 180 day period.

(2) Individual Chapter 11 Case. The report of substantial consummation shall be filed not later than thirty (30) days after completion of all payments under the confirmed plan.

(3) Form of Report of Substantial Consummation in Chapter 11 Case. Unless otherwise ordered by the Court, the final report shall be signed and sworn to or affirmed under penalties of perjury, include the proper caption, and include, without limitation, at least the following information:

1. Administrative Expenses:

Trustee Compensation (if applicable)	$
Attorney for Trustee Compensation (if applicable)	$
Attorney for the Debtor Compensation	$
Other Professional Compensation	$
All Expenses	$
Total Administrative Expenses	$

2. Percentage of claims paid: %
   Percentage of claims paid to general unsecured creditors %

(c) **Required Certification in Individual Chapter 11 Case.** In an individual chapter 11 case, the motion for final decree shall include a Chapter 11 Debtor's Certification that the debtor is entitled to a discharge. Any party wishing to contest the entry of a discharge must file a written objection to the entry of a discharge not later than seven (7) days prior to the return date of the motion for final decree and serve the objection on the debtor, debtor's attorney, United States trustee, and any party having filed a notice of appearance in the case. If no objection to discharge is filed, the Clerk may issue a discharge in the case.

RULE 4001-1 RELIEF FROM THE AUTOMATIC STAY

(a) **Motion Contents Generally.** A motion for relief from the automatic stay shall include the following information to the extent applicable:

(1) The factual grounds that establish standing to bring the motion;

(2) The specific statutory basis and factual grounds for relief sought, including with specificity the contractual default of the debtor;

(3) The specific description of the collateral, including, where appropriate, the vehicle identification number (VIN), make, model, serial number, street address, and recording information (including the Clerk's office volume/page number);

(4) The names and purported interests of all parties known or, discovered after reasonable investigation, who claim to have an interest in the property;

(5) The amount of the outstanding indebtedness on each lien, admissible evidence as to value of the collateral, and the basis for the valuation;

(6) Legible and complete copies of movant's note, recorded mortgage, security agreement, modification(s), and assignment(s), if any; and

(7) Evidence of perfection of the movant's lien or interest.

(b) **Motions Involving Real Property in Cases Where the Debtor is an Individual.** If the movant seeks stay relief with respect to a mortgage on real property and the basis for the motion is a payment default, and the debtor has not indicated in the petition and schedules or in a plan of reorganization that the debtor intends to surrender the real property, the movant shall file, as an exhibit to the motion, a completed copy of Certification of Payment History on the Note and Mortgage Dated and Related Information. If the Certification is not required, the movant shall indicate the reason why in its motion.

(c) **Objections.** A debtor objecting to the secured creditor's motion shall, to the extent applicable:

(1) State with specificity those allegations of the secured creditor that the debtor disputes;

(2) Articulate the debtor's legal and factual basis for asserting that the secured creditor is not entitled to relief from stay; and

(3) Include copies of records showing proof of any payments that the secured creditor has not acknowledged as having been received on the obligation or include an explanation as to why those records are not appended and the date they will be filed. If the motion is based upon a lack of equity in the property, then the debtor shall be required to include admissible evidence of value in the response.

(d) **Grounds for Denial.** Upon the request of a party in interest, the Court may deny without prejudice a motion for relief from stay involving encumbered real or personal property that fails to include the items recited in paragraph (a) of this Rule and/or that fails to include a completed copy of the form required under paragraph (b) of this Rule.

(e) **Failure to Support Opposition.** The debtor's failure to meet the requirements set forth in paragraph (c) of this Rule constitutes cause for the Court to deny the debtor's request for additional time to produce records and grant the motion as unopposed.

(f) **Surplus Proceeds.** Movant shall include in the proposed order granting a motion for relief from the stay a directive that (i) the case trustee be added as a necessary party to receive notice of the report of sale and surplus money proceedings; and (ii) closure of the case shall not constitute an abandonment of the trustee’s interest, if any, in any surplus proceeds.

RULE 4001-2 OBTAINING CREDIT

If authority for obtaining credit or incurring debt is sought pursuant to § 364(c) or (d), notice of the motion shall expressly state whether priority over any or all administrative expenses specified in §§ 503(b) or 507(b) is sought and, to the extent readily ascertainable, those creditors specifically affected thereby.

RULE 4001-3 CHAPTERS 12 AND 13 – OBTAINING CREDIT

(a) **Application.** The debtor shall make written application to the trustee for approval to incur any non-emergency consumer debt in excess of $1,500.00 that does not involve a material modification of the debtor's budget. The debtor shall not file the application.

(1) **Trustee Approval.** If approved by the trustee, the trustee shall file the approval and the application.

(2) **Trustee Denial.** If denied by the trustee, the debtor may file a motion to incur non-emergency consumer debt. The motion shall contain as an attachment the trustee's denial. If a motion is required, the motion shall be on notice to the trustee, the United States trustee, and all creditors.

RULE 4002-1 CHANGE OF ADDRESS OF DEBTOR AND DEBTOR'S COUNSEL

(a) If the address of the debtor is changed at any time prior to closure of the case, the debtor shall immediately provide written notice of such change to the Clerk, the United States trustee, any trustee or committee, and any other parties affected thereby.

(b) If the address of debtor's counsel is changed at any time prior to closure of the case, debtor's counsel shall immediately send a letter to Court's Director of IT that advises of the address change.

Director of IT
United States Bankruptcy Court
James T. Foley Courthouse
445 Broadway
Suite 330
Albany, NY 12207

RULE 4002-2 CHANGE OF ADDRESS OF PARTY IN INTEREST

If the address of a party in interest is changed at any time prior to closure of the case, the party in interest may file written notice of such change with the Clerk. The notice shall contain the debtor's name, case number, the party's name, the original address given to the Clerk, and the party's complete new address.

RULE 4002-3 DUTY TO MAINTAIN A VALID E-MAIL ADDRESS

(a) **Valid E-Mail Address.** A registered user of the CM/ECF system must maintain a valid e-mail address and promptly resolve any technical issue with the user's e-mail account.

(b) **Change of E-Mail Address.** A registered user must immediately update their CM/ECF user account if there is any change to their e-mail address. This may be accomplished by using the feature "Maintain Your ECF Account" found under the "Utilities Menu."

(c) **Undeliverable E-Mails.** The Clerk may disable a registered user's account if an e-mail is returned to the Clerk as undeliverable. Common reasons why e-mails are undeliverable include a full mailbox or a filter issue. The holder of a disabled account cannot file electronically and may be brought before the Court on an order to show cause for failing to comply with the Court's electronic filing requirements.

RULE 4004-1 COMPLETION OF PLAN AND ENTRY OF A CHAPTER 12 OR CHAPTER 13 DISCHARGE

(a) Trustee's Final Report. Upon completion of payments under a Chapter 12 or 13 plan, the trustee shall file a report that all payments required under the plan have been made.

(b) Debtor's Certifications.

(1) Requirement Prior to Issuance of Discharge. In a case filed on or after October 17, 2005, within thirty (30) days of the filing of Trustee's Final Report, the debtor shall file a Chapter 12 Debtor(s) Certifications Regarding Domestic Support Obligations and §§ 522(q) and 1228 or Chapter 13 Debtor(s) Certifications Regarding Domestic Support Obligations and §§ 522(q) and 1328 under penalties of perjury as part of the necessary basis for the issuance of a discharge. If the certifications are filed prior to the Trustee's Final Report, the filing party will be notified that the filing is premature, and current certifications will need to be refiled after the Trustee's Final Report is filed.

(2) Request for Waiver of Certifications for Deceased Debtor. Upon ex parte application and submission of a proposed order, the court may consider the waiver of certifications required under LBR 4004-1(b) for a deceased debtor. The ex parte application must be supported by a properly redacted death certificate.

(c) Discharge Hearing.

(1) Chapter 13 Case. Upon the timely filing of the certifications regarding domestic support obligations and §§ 522(q) and 1328 and Official Form 4 23 – Debtor's Certification of Completion of Instructional Course Concerning Financial Management, the Clerk shall issue a Notice of Default Hearing on Request for Discharge Pursuant to § 1328. If the certifications and Official Form 4 23 or a motion to extend time to file are not timely filed, the Clerk may close the case without discharge and notify creditors of the same

(2) Chapter 12 Case. Upon the timely filing of the certifications regarding domestic support obligations and §§ 522(q) and 1228, the Clerk shall issue a Notice of Default Hearing on Request for Discharge Pursuant to § 1228. If the certifications or a motion to extend time to file are not timely filed, the Clerk may close the case without discharge and notify creditors of the same

(d) Objection to Entry of Discharge. Any party wishing to contest the entry of a discharge must file a written objection to the entry of a discharge not later than seven (7) days prior to the date set by the Clerk for the hearing on the Request for Discharge and serve such objection on the debtor, debtor's attorney, the trustee, the United States trustee, and any party having filed a notice of appearance. In the event no objections to discharge are filed, and the debtor is otherwise eligible to receive a discharge, the

Clerk may issue a discharge in the case.

(e) **Case Closed Without Discharge.** If a case is closed without a discharge under paragraph (c) of this Rule, the debtor shall file a motion to reopen the case and pay a fee equal to the filing fee for a chapter 12 or 13 petition, as applicable, in order to obtain a discharge. The fee to reopen a case to obtain a discharge cannot be waived.

RULE 4004-2 MOTION FOR HARDSHIP DISCHARGE

(a) Content of Motion. Motions for discharge under 11 U.S.C. § 1328(b) shall be filed with the court and served on the trustee, United States trustee, any party having filed a notice of appearance and all creditors, at least 21 days preceding the date fixed for hearing. The motion shall set forth the basis for the discharge and provide evidence in support of the motion. A copy of a proposed order shall be attached to the motion as an exhibit to the motion.

(b) Requirements Prior to Issuance of Hardship Discharge. Prior to a discharge being entered by the Court, debtor or debtors are required to file with the court the Chapter 13 Debtor(s) Certifications Regarding Domestic Support Obligations and Section 522(q) and 1328 [Local Form O1328C] and the Debtor's Certification of Completion of Instructional Course Concerning Financial Management [Official Form 423]. Both certifications are required for any case filed AFTER October 16, 2005, unless waived by application and an order of the court.

(c) Objections to Entry of Discharge. Any party wishing to contest the entry of a discharge must file a written objection to the entry of a discharge not later than (7) days prior to the date set by the Clerk for the hearing on the Request for Discharge and serve such objection on the debtor, debtor's attorney, the trustee, the United States trustee, and any party having filed a notice of appearance. In the event no objections to discharge are filed, and the debtor is otherwise eligible to receive a discharge, the Clerk may issue a discharge in the case.

RULE 4080-1 CHAPTERS 12 AND 13 – EMERGENCY REFUND OR CREDIT

(a) **Written Request to Trustee.** The trustee is authorized to issue an emergency refund or allow an emergency credit in a chapter 12 or 13 case from property of the estate in an amount not to exceed one monthly payment or credit per case, per year, provided that:

(1) The request for such refund or credit is in writing;

(2) The request is signed by the debtor (both debtors in a joint case) or by the debtor's counsel;

(3) Exigent circumstances support such emergency refund or credit; and

(4) The issuance of the refund or allowance of the credit will not substantially affect distributions to creditors.

(b) **Form of Emergency Refund or Credit.** The trustee has discretion to issue an emergency refund check or allow the debtor to forego the next monthly payment.

RULE 5005-1 ELECTRONIC FILING

(a) **Filing.** A list, schedule, statement, proof of claim, complaint, motion, application, objection and other papers (each a "document") must be filed electronically in accordance with the Administrative Procedures, unless otherwise ordered by the court.

(b) **Deficient Documents.** The Clerk may issue to the filer of a document a notice of deficiency that specifies the error and contains instructions on how to correct a filing that does not conform to the Administrative Procedures.

(c) **Signature.** The electronic filing of a document bearing an electronic signature (example: /s/Jane Smith) constitutes the signature of the filer under Fed. R. Bankr. P. 9011.

(d) **Use of Court's Website to File an Electronic Proof of Claim (EPOC).** Any proof of claim filed electronically, using this court's website, shall have the same force and effect as if the individual signed a paper copy of the proof of claim.

(e) **Use of Court's Website to Submit an Electronic Registration for CM/ECF Password**. Any CM/ECF Registration form submitted electronically, using this court's website, shall have the same force and effect as if the individual signed a paper copy of the registration form.

(f) **Filing Fees.** A filing fee is to be paid via the on-line payment program on the same day it is incurred. Failure to pay a filing fee will result in the suspension of the filer's ECF ability to electronically file documents. Said suspension will be lifted once the fee is paid.

(g) **Filing in a Dismissed Case.** Until an order revoking a dismissal order is entered, the only permissible filings in a dismissed case are a required filing by a trustee, an administrative filing by the Clerk and the Bankruptcy Noticing Center, and a motion to vacate or reconsider a dismissal order.

(h) **Filing in a Closed Case.** The only permissible filing in a closed case is a motion to reopen, unless otherwise ordered by the court.

(i) **Violation.** Any filings made in contravention of paragraphs (g) or (h) may be stricken sua sponte by the Court.

RULE 5005-2 ELECTRONIC CASE FILING PASSWORDS

(a) **Password for Electronic Filing.** A Court-issued CM/ECF password is required to file electronically. Attorneys and certain non-attorney participants are eligible to receive CM/ECF passwords.

(1) **Attorney – Within District.** An attorney admitted to practice in the Northern District of New York will be issued a password after:

(A) Submitting a completed Attorney Registration Form to the Court; and

(B) Obtaining a score of at least 80% on the Court's CM/ECF Certification Exam.

(i) CM/ECF Training Classes will be held periodically throughout the year for interested attorneys and staff members.

(2) **Attorney Password – Out of District.** An attorney not admitted to practice in the Northern District of New York who is a registered CM/ECF user in another federal court will be issued a limited-use password after:

(A) Submitting a completed Attorney Registration Form to the Court; and

(B) Obtaining a score of at least 80% on the Court's CM/ECF Certification Exam.

(3) **Filing Agent.** An attorney or trustee may request multiple logins and passwords for legal staff who file as agents on their behalf. When an agent files on behalf of the attorney, the docket text displays the name of the attorney as the filer. A filing agent may obtain a login and password by submitting a completed Filing Agent Form.

(4) **Non-Attorney (Limited Use) Password.** A creditor who is not represented by an attorney or a claims agent may obtain a limited-use password. The limited-use password may only be used to file a proof of claim, objection to claim, transfer of claim, objection to transfer of claim, request to reclassify a claim, withdrawal of a claim, notice of appearance and request for notices, reaffirmation agreement, and certificate of service. A participant will be issued a limited-use password upon submitting to the Court the appropriate Participant Registration Form.

(b) **Submission of Paper or Non-electronic Registration Form for Obtaining a Password.** A signed original Attorney Registration Form, Participant Registration Form or Filing Agent Registration Form shall be mailed or delivered to:

Director of IT
United States Bankruptcy Court
James T. Foley Courthouse
445 Broadway
Suite 330
Albany, NY 12207

(c) **Submission of an Electronic Registration Form for Obtaining a Password.** Registration for a CM/ECF password can also be completed electronically by accessing the Electronic Registration link on this court's website.

(d) **Misuse of CM/ECF Account Holder.** No account holder may permit his/her password to be used other than by an authorized employee of his/her firm. A CM/ECF account holder's misuse of a password will result in the suspension of CM/ECF account privileges.

(e) **Misuse of Password by Non-Account Holder.** A non-account holder's misuse of a password is punishable by contempt and the imposition of sanctions.

Comment

Issuance of a limited-use password under subparagraph (a)(3) of this Rule is not a substitute for admission pro hac vice.

RULE 5007-1 PHOTOGRAPHY, RECORDING DEVICES AND BROADCASTING

(a) **Prohibition.** All photographing, oral or video tape recording, and radio or television broadcasting is prohibited in the courtroom during the progress of or in connection with judicial proceedings, whether or not Court is actually in session. None of the foregoing activities are allowed in a jury room, the office of a judge, or in any room, hallway, or corridor of the floor of the building in which a courtroom is located.

(b) **Court Exception.** Notwithstanding paragraph (a), the Court may permit recording of ceremonial, investiture, and educational proceedings, and the actions of its personnel while acting in an official capacity.

(c) **Court Personnel Exception.** Court personnel are not prohibited by this Rule from making a recording for the sole purpose of discharging their official duties. Any recording made in furtherance of those duties shall not be used for any other purposes by any other person.

RULE 5007-2 RECORD OF PROCEEDINGS

(a) Audio Record of Court Hearings.

Digital audio recordings will be available on PACER for select hearings and trials conducted on or after March 16, 2015. The audio recording will appear on the docket as a PDF with an embedded MP3 file. It generally will be available within 48 hours after the conclusion of the subject hearing.

(b) Transcripts

The official record of any Court hearing remains the written transcript.

Comment

This is a pilot program; currently, the audio record of a proceeding is only available in the Syracuse Division. This technology is provided as a courtesy to document the record of the hearing and should not be treated as a substitute for a required appearance.

RULE 5010-1 REOPENING A CASE

(a) **Closed Cases.** The only permissible filing in a closed case is a motion to reopen.

(b) **Filing Fee.** A motion to reopen a case pursuant to Fed. R. Bankr. P. 5010 shall be in writing and shall be accompanied by the appropriate filing fee.

(1) **Waiver.** The Court may waive payment of the filing fee when a case is reopened to correct an administrative error or on account of actions relating to the debtor's discharge.

(2) **Deferral.** The Court may defer payment of the filing fee when a case is reopened by a trustee and there is no asset available from which to pay the filing fee. The filing fee shall be paid promptly upon the trustee's ability to do so. The trustee shall notify the Court if no assets are discovered and payment of the filing fee will be waived.

(c) **Retrieval Fee.** A separate retrieval fee must accompany the motion if the case has been transmitted to the Federal Records Center for storage. The retrieval fee may not be waived by the Court.

(d) **Notice of Motion to Reopen.** Unless the Court orders otherwise, notice of a motion to reopen shall be given to the former trustee, the United States trustee and, when the moving party is not the debtor, to the debtor and debtor's counsel. Except as provided in paragraph (e) of this Rule, a motion to reopen a case must be noticed for a hearing pursuant to LBR 9013-3.

(e) **Ex Parte Relief.** A motion to reopen a case may be considered ex parte if the purpose of the motion is (1) to file a debtor's certificate of completion of financial management course, (2) to correct an administrative error, (3) on account of actions relating to the debtor's discharge, or (4) to avoid a judicial lien pursuant to § 522(f).

(f) **Request for Other Relief.** No other relief may be requested in a closed case until the order reopening the case is entered. A motion filed in a closed case will not be acted upon and will result in a deficiency notice being issued by the Clerk.

Rule 5011-1 WITHDRAWAL OF A CASE OR PROCEEDING (WITHDRAWAL OF REFERENCE)

(a) **Form of Request and Place for Filing.** A request for withdrawal of a case, in whole or in part, or proceeding, other than a sua sponte request by the Court, shall be by motion in accordance with LBR 9013-1. The Court may not conduct a hearing on a motion for withdrawal, but the motion should be filed with the Clerk with the appropriate fee. The fee is equal to the civil action filing fee under 28 U.S.C. § 1914(a). All such motions shall clearly and conspicuously state that: RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE under Fed. R. Bankr. P. 5011(a).

(b) **Stay of Proceedings.** The filing of a motion for withdrawal does not automatically stay proceedings in the Court. Any motion for a stay shall be filed in accordance with the requirements of Fed. R. Bankr. P. 5011(c).

(c) **Responses to a Motions for Withdrawal.** A response to a motion for withdrawal shall be filed with the Clerk and served on all interested parties within fourteen (14) days of service of the motion.

(d) **Designation of Record.**

(1) **Withdrawal of Bankruptcy Case.** Upon the Clerk's entry of a District Court order withdrawing a bankruptcy case, in whole or in part, the moving party shall file a list designating those portions of the record of the proceedings in the Court that the moving party believes will be reasonably necessary or pertinent. If the record designated includes a transcript of any proceeding or a part thereof, the designating party shall immediately deliver to the ECRO a written request for the transcript and make satisfactory arrangements for payment of its cost.

(2) **Withdrawal of Adversary Proceeding.** Where the District Court orders the withdrawal of an adversary proceeding, the Court shall designate the entire record of the adversary proceeding.

(e) **Proceedings in District Court.** After the record is transmitted to the District Clerk, documents pertaining to the matter under review by the District Court shall be filed with the District Clerk, but all documents relating to other matters in the bankruptcy case or adversary proceeding shall continue to be filed with the Clerk.

RULE 6004-1 SALE OF ESTATE PROPERTY

(a) **Appraisal Filed With the Court Prior to Sale.** The appraisal prepared by a Court-appointed appraiser shall be filed not later than seven (7) days prior to the return date of the motion to approve the sale of the appraised property, unless the Court orders otherwise. Property subject to an appraisal shall not be sold until the appraisal has been filed with the Clerk and served upon the United States trustee.

(b) **Access and Confidentiality of Filed Appraisal.** A confidential appraisal may be submitted in paper format to the Clerk in a sealed envelope marked "CONFIDENTIAL APPRAISAL." The envelope shall also include the complete caption of the case/proceeding and identification of the property appraised. The Clerk, the United States trustee and the appraiser shall maintain the confidentiality of the appraisal, unless the Court directs otherwise.

(c) **Contents of Sale Motion.** In addition to the requirements set forth in LBR 6004-2(b) and LBR 6004-3(a), if applicable, a motion to sell estate property shall contain the following, unless the Court orders otherwise:

(1) A description of the property;
(2) The name and address of the buyer;
(3) The sale price, and whether the sale is an arm's-length transaction;
(4) Marketing efforts;
(5) The name of each lien holder and amount of each lien;
(6) Whether the sale is free and clear of liens and encumbrances, or is subject to liens and encumbrances;
(7) Whether the proceeds will be subject to any exemption by the debtor, and if so, the amount and nature of the exemption;
(8) The estimated benefit to be realized by the estate from the sale;
(9) That the sale is subject to higher or better offers at the hearing; and
(10) The proposed attorney's fee payable upon sale, a list and explanation of other proposed deductions from the sale proceeds, and the approximate amount of closing costs.

(d) **Sale of Firearms.** A motion or application to sell a firearm requiring a license shall state that the proposed purchaser holds a valid license. A sale will not be approved unless proof that the purchaser has the required license is filed with the Court.

RULE 6004-2 CHAPTER 11 – SALE OF ESTATE PROPERTY OTHER THAN IN THE ORDINARY COURSE OF BUSINESS

(a) **Sale Prior to Confirmation.** In a chapter 11 case, if the debtor or trustee seeks authority to sell property of the estate under § 363(b) prior to the entry of an order of confirmation, the notice of motion shall contain a clear and conspicuous statement to that effect.

(b) **Content of Notice.** In addition to the information required under Fed. R. Bankr. P. 2002(c), the notice of motion to sell property of the estate under § 363(b) shall specify:

(1) The benefit to be realized by each class of creditors from the proceeds of sale;
(2) The extent of the debtor's liabilities;
(3) The estimated net value of any of the remaining assets not subject to the proposed sale; and
(4) The business justification for disposing of estate assets outside the ordinary course of business before a disclosure statement has been approved or a plan confirmed.

RULE 6004-3 CHAPTERS 12 AND 13 – SALE OR OTHER DISPOSITION OF ESTATE PROPERTY

(a) **Disposition of Real Property.** The debtor shall file a motion for approval of the sale of real property after a contract of sale is procured. The motion shall be on notice to all parties in interest, all potential bidders, and the trustee. In addition to the requirements of LBR 6004-1(c), the motion shall state the following:

(1) Whether the debtor's plan has been confirmed;
(2) Whether the property is the debtor's residence;
(3) Notwithstanding LBR 6004-1, the motion shall provide an itemized valuation of all property to be sold together with the basis for each valuation and whether the property has been appraised and, if so, when, and by whom;
(4) The approximate amount of unpaid real estate taxes;
(5) The name of any realtors and the proposed real estate commission;
(6) The approximate amount of the sale proceeds to be paid into the plan; and
(7) Whether the plan provides for a sale.

(b) **Exhibits.** A copy of the contract shall be provided as an exhibit.

(c) **Statement of Sale.** The debtor shall provide the trustee with a copy of the statement of sale not later than seven (7) days after the closing of the sale. In the event the sale does not close, the debtor shall notify the trustee promptly.

(d) **Fees.** Fees to be paid to any professional attendant to the sale of real property including, without limitation, a real estate agent, a broker, and the debtor's real estate attorney must be approved by the Court prior to payment.

(e) **Disposition of Real or Personal Property Valued at Less Than $2,500.** To sell or otherwise dispose of real or personal property with a value of $2,500 or less, the debtor shall make written application to the trustee and any other creditor with a lien on the property. The debtor shall not file the application. If approved by the trustee, the debtor may dispose of or sell the property in accordance with the terms and conditions approved by the trustee. The trustee shall file the approval and application. If not approved by the trustee, the debtor may file a motion to dispose of or sell property of the estate and the motion shall contain as an attachment a copy of the trustee's denial. The motion shall be on notice to all parties in interest.

RULE 6005-1 APPRAISERS AND AUCTIONEERS

(a) **Compensation of Auctioneers.** An auctioneer shall be allowed compensation and reimbursement of expenses as follows, unless the Court orders otherwise:

(1) **Maximum Commissions.** The maximum allowable commissions are as follows:

(A) 12% of any gross proceeds of sale on the first $100,000. or less;

(B) 5.5% of any gross proceeds of sale between $100,001 and $200,000; and

(C) 2.5% of any gross proceeds of sale in excess of $200,000.

(2) **Expenses.**

(A) The auctioneer shall be reimbursed for the reasonable and necessary expenses directly related to the sale, including bond or blanket bond premium costs attributable to said sale, labor, printing, advertising and insurance, but excluding worker's compensation, social security, unemployment insurance or other payroll taxes. An auctioneer shall be reimbursed for a blanket bond at the rate of $100 per case or 10% of the gross proceeds from an auction, whichever is less, less any amounts previously reimbursed for said bond, unless the Court orders otherwise.

(B) If directed by the trustee to transport goods, the associated costs shall be reimbursable.

(b) **Bond.** An auctioneer employed with Court approval shall not act until a surety bond in favor of the United States of America is provided in each estate, at the auctioneer's expense. The bond shall be approved by the Court and shall be in an amount sufficient to cover the aggregate appraised value of all property to be sold, or in such sum as may be fixed by the Court, conditioned upon:

(1) The faithful and prompt accounting for all monies and property which may come into the possession of the auctioneer;

(2) Compliance with all rules, orders, and decrees of the Court; and

(3) The faithful performance of duties in all respects in all cases in which the auctioneer may act.

(c) **Report of Sale.** The auctioneer shall file a report with the Clerk and serve the United States trustee within thirty (30) days after conclusion of the sale. The report of sale shall set forth:

(1) The time, date and place of sale;

(2) The gross amount realized by the sale;

(3) An itemized statement of commissions sought under this Rule and disbursements made, including the name of the payee and the original receipts or cancelled checks, or copies thereof, substantiating the disbursements. Where labor charges are included, the report shall specify the name(s) of the person(s) employed, the hourly wage, and the number of hours worked by each person. If the cancelled checks are not available at the time the report is filed, then the report shall so state, and the cancelled checks shall be filed as soon as they become available;

(4) Where the auctioneer has a blanket insurance policy covering all sales conducted for which original receipts and cancelled checks are not available, an explanation of how the insurance expense charged to the estate was allocated;

(5) The names of all purchasers at the sale;

(6) The sign-in sheet, indicating the number of people attending the sale;

(7) The disposition of any items for which there were no bid;

(8) The terms and conditions of sale read to the audience immediately prior to the commencement of the sale;

(9) A statement of the manner and extent of advertising the sale and the availability of the items for inspection prior to the sale;

(10) The amount of sales tax collected; and

(11) Such other information as the Court may require.

(d) **Proceeds of Sale.** Unless the Court orders otherwise, the proceeds of sale less the auctioneer's reimbursable expenses, shall be turned over to the trustee as soon as practicable and not later than twenty-one (21) days from the date of sale or shall be deposited in a separate interest-bearing account. The Court retains the jurisdiction to review the auctioneer's reimbursable expenses for reasonableness. In the event the Court determines that a portion of the expenses deducted from the proceeds of the sale are unreasonable, the auctioneer shall be required to return those funds to the trustee.

(e) **Application for Commissions and Expenses.** An auctioneer shall apply to the Court for approval of commissions and expenses on not less than twenty-one (21) days' notice as required by Fed. R. Bankr. P. 2002 and in conformance with LBR 2002-1. No such application shall be granted unless the report referred to in paragraph (c) has been filed.

(f) **Purchase Prohibited by Auctioneer, Appraiser, and/or Agent.** An auctioneer or officer, director, stockholder, agent, or employee of an auctioneer shall not purchase directly or indirectly, or have a financial interest in, the purchase of any property of the estate which the auctioneer has been employed to sell. Likewise, an appraiser or officer, director, stockholder, agent, or employee of an appraiser shall not purchase directly or indirectly, or have a financial interest in, the purchase of any property of the estate that the appraiser has been employed to appraise.

RULE 6007-1 ABANDONMENT OR DISPOSITION OF DEBTOR'S BOOKS, RECORDS AND PAPERS

(a) **Available Options.** Unless the Court orders otherwise, the trustee, subject to applicable non-bankruptcy law, may

(1) Place in storage, at the expense of the estate, the debtor's books, records, and papers;

(2) Return the debtor's books, records, and papers to the debtor or its principal(s) after issuance of the final decree; or

(3) Dispose of all the debtor's books, records, and papers in the trustee's possession, after issuance of the final decree, provided that the debtor's books, records, and papers are first offered to the debtor.

(b) **Privacy Protection.** Any trustee disposing of a debtor's books, records, and papers shall redact and/or shred any confidential and/or personal information including, but not limited to billing records, medical records, social security numbers, tax identification numbers, and financial account numbers.

RULE 7003-1 ADVERSARY PROCEEDING COVER SHEET

A complaint filed to commence an adversary proceeding shall be accompanied by an Adversary Proceeding Cover Sheet (Official Form 1040).

RULE 7004-1 SUMMONS

(a) **Issuance of Summons.** Upon the filing of an adversary complaint or a third party complaint, the summons will be automatically generated and docketed through the CM/ECF system. The plaintiff shall be responsible for printing the summons and serving it pursuant to Fed. R. Bankr. P. 7004. In the case of multiple defendants the plaintiff shall be responsible for making such duplicate copies of the summons as are necessary to effect service.

(b) **Reissuance of Summons.** If a party fails to effect service of the summons within fourteen (14) days of its issuance as required by Fed. R. Bankr. P. 7004, the Clerk shall reissue a summons upon written request.

Comment

A complaint should be filed electronically. The CM/ECF system will electronically transmit the summons to the filer. If a complaint is filed in paper format by a pro se filer, an unregistered user of the CM/ECF system, or a registered user who is unable to utilize the CM/ECF system, the Clerk will generate the summons and provide it to the filer electronically, by mail, or by personal delivery if the filer is present in the Clerk's office at the time of issuance.

RULE 7016-1 PRE-TRIAL PROCEDURES

Insofar as Fed. R. Civ. P. 16(b), made applicable in adversary proceedings by Fed. R. Bankr. P. 7016, mandates a scheduling order and describes its contents, it shall not be applicable to adversary proceedings or contested matters in this district.

Comment

The Court will issue pretrial orders, as appropriate. This Rule should be read in conjunction with LBR 7026-1.

RULE 7026-1 DISCOVERY – GENERAL

(a) **Required Disclosure.** The initial disclosures required under Fed. R. Civ. P. 26(a)(1), (2), and (3), made applicable in adversary proceedings by Fed. R. Bankr. P. 7026, shall be operative unless the Court orders otherwise.

(b) **Meeting of Parties.** The provisions of Fed. R. Civ. P. 26(d) and (f), made applicable in adversary proceedings by Fed. R. Bankr. P. 7026, insofar as they mandate an actual meeting of the parties twenty-one (21) days before a scheduling conference, require the submission of a written report, and prohibit a party from seeking discovery from any source prior to any such meeting, shall not apply to a contested matter or adversary proceeding, unless the Court orders otherwise.

Comment

This provision permits the Court to limit the provisions of Fed. R. Civ. P. 26, as made applicable in adversary proceedings by Fed. R. Bankr. P. 7026, on a case by case basis.

This Rule should be read in conjunction with LBR 7016-1.

RULE 7026- 2 DISCOVERY MOTIONS

(a) **Required Affidavit.** No discovery motion shall be heard by the Court unless counsel for the movant files a supporting affidavit certifying that counsel for the movant has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised by the motion and that counsel have been unable to reach such an agreement.

(b) **Partial Resolution.** If one or more of the issues have been resolved by agreement prior to the return date of the motion, movant's counsel shall file a supplemental affidavit that identifies the issues so resolved and the issues that remain unresolved.

RULE 7040-1 TRIAL EXHIBITS

(a) **Exhibits to be Offered.** Except as otherwise ordered by the Court or as directed by the Court's scheduling order, three (3) sets of all exhibits (original and two (2) copies) to be offered into evidence must be submitted to the Court in hard copy.

(b) **Retention and Return.** Unless otherwise ordered by the Court, the original exhibits from a trial or evidentiary hearing shall be retained by the Clerk until such time as a decision or verdict has been rendered and expiration of the time allowed for an appeal or, if an appeal is filed, after the appeal is adjudicated. Exhibits shall thereafter be available for return, pick up or destruction. The Court will contact the party who introduced the exhibits for their instruction.

RULE 7040-2 ADJOURNMENT OF TRIAL AND EVIDENTIARY HEARING

An adjournment of a trial or evidentiary hearing shall not be granted, except upon a showing to the Court of exceptional circumstances. Any such request shall be filed electronically and indicate whether all parties have consented. For cases assigned to the Albany division, the request shall also be faxed to Chambers.

RULE 7041-1 DISMISSAL OF ADVERSARY PROCEEDING BROUGHT PURSUANT TO 11 U.S.C. § 727

(a) **Voluntary Dismissal.** An adversary proceeding commenced pursuant to § 727 shall be dismissed only upon Court approval.

(b) **Obtaining Court Approval.** Court approval of the voluntary dismissal is conditioned upon full disclo**sure a**s to the circumstances of the dismissal, including the terms of any agreement entered into between the parties. If the action is not dismissed in the presence of the Court on the record, then plaintiff shall file a proposed order of dismissal accompanied by a stipulation fully disclosing the circumstances of the dismissal and any consideration promised to be given, directly or indirectly, for the dismissal of the action. The Court may, alternatively, direct the defendant to prepare and file the stipulation required by this Rule.

(c) **Notice.** Notice of the proposed voluntary dismissal shall be given to the trustee, the United States trustee, and such other persons as the Court may direct.

Comment

This Rule shall apply without regard to whether a dispute is settled through mediation.

RULE 7055-1 DEFAULT JUDGMENT

(a) **Default Judgment Application Deadline.** A plaintiff entitled to a default judgment due to defendant's failure to answer, appear, or otherwise defend the action, must file the appropriate application for default judgment within forty-five days after the first day plaintiff is entitled to entry of default. Failure to seek a default judgment within forty-five (45) days after default occurs may result in the Court dismissing the adversary proceeding pursuant to Fed. R. Bankr. P. 7041.

(b) **Clerk's Entry of Default.** Prior to filing an application for default judgment, the party seeking default judgment shall obtain the Clerk's Entry of Default by filing an affidavit containing sufficient factual allegations to determine the following:

(1) The summons and complaint have been timely and properly served on the defaulting party as required by Fed. R. Bankr. P. 7004;

(2) An accurate and complete certificate of service has been filed and a copy included as an exhibit to the affidavit;

(3) The defaulting party is not an infant, an incompetent person, nor in the military service (see comment); and

(4) The defaulting party has failed to plead or otherwise defend the action.

(c) **Obtaining a Default Judgment from the Clerk.** The Clerk may enter a default judgment if the defaulting party is not the debtor, the underlying action is a core proceeding and the default judgment is for a sum certain and does not include a request for attorney's fees or other substantive relief. A party seeking entry of a default judgment by the Clerk must file the following:

(1) An affidavit of the amount due and the basis for the same;

(2) A copy of the Clerk's Entry of Default; and

(3) A proposed judgment for signature by the Clerk.

(d) **Obtaining a Default Judgment from the Court.**

(1) **Core Proceeding.** Where the adversary proceeding is a core proceeding, a party seeking entry of default judgment by the Court shall file:

(A) A motion for default judgment;

(B) An affidavit under Fed. R. Civ. P. 55(b)(2), made applicable by Fed. R. Bankr. P. 7055;

(C) A copy of the Clerk's Entry of Default;

(D) An affidavit of amount due including a statement of the damages being requested and the basis for them;

(E) A proposed order granting the motion for judgment by default;

(F) A proposed judgment, if applicable, for signature by the Court; and

(G) If the party against whom a default judgment is sought has appeared in the proceeding or is the debtor, an affidavit of service indicating notice of the motion was provided to the defaulting party as required by Fed. R. Bankr. P. 9014.

(2) **Non-Core Proceeding.** Where the adversary proceeding is a non-core proceeding, plaintiff may seek a Recommendation from the Court to the District Court that a default judgment be entered by filing the following:

(A) An affidavit under Fed. R. Civ. P. 55(b)(2), made applicable by Fed. R. Bankr. P. 7055;

(B) A copy of the Clerk's Entry of Default;

(C) An affidavit of amount due including a statement of the damages being requested and the basis for them;

(D) A proposed order transmitting record to District Court, combined with the finding that the complaint has been properly served and the time within which to answer or other respond has passed and no pleading has been filed and that it is recommended that the Default Judgment enter default judgment;

(E) A proposed order granting the motion for judgment by default for signature by the District Court; and

(F) A proposed judgment, if applicable, for signature by the District Court.

Comment

Securing a default judgment is a two-step process. A party seeking a default judgment must follow (1) the procedure outlined in paragraph (b) of this Rule, and then (2) either the procedure outlined in paragraphs (c) or (d) of this Rule. (*Comment continued on next page*).

In his discretion or where entry of default judgment by the Clerk is not permissible, the Clerk may present any application for default judgment to the Court for its consideration.

Through use of the following website, the U.S. Department of Defense will advise either that it does possess information regarding whether an individual is on active duty, or it does not possess information indicating that the individual is or was on active duty:

http://www.dmdc.osd.mil/appj/scra/scraHome.do

RULE 7056-1 SUMMARY JUDGMENT

(a) **Motion for Summary Judgment.** A summary judgment motion under Fed. R. Bankr. P. 7056 shall include a separate, concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue, supported by specific citations to the record.

(b) **Memorandum in Support.** The moving party shall file with the motion a memorandum of law that cites all authorities upon which the party relies. The memorandum must disclose all controlling authorities, including those contrary to movant's position.

(c) **Response.** The papers opposing the motion shall include a separate, concise statement, in numbered paragraphs, of each material fact as to which the opposing party contends there is a genuine issue, supported by specific citations to the record. The Court may deem admitted each material fact set forth in the statement served by the moving party if not controverted by the statement served by the opposing party.

(d) **Memorandum in Opposition.** The respondent shall file with its opposition to the motion a memorandum of law that cites all authorities upon which the respondent relies. The memorandum must disclose all controlling authorities, including those contrary to respondent's position.

(e) **Grounds for Denial of Motion.** The Court may deny the motion for summary judgment if the moving party fails to comply with the requirements of this Rule.

Comment

Syracuse division only: All motions for summary judgment shall be set by the Court. CM/ECF will prompt a filer of a motion for summary judgment to contact the Court's courtroom deputy for a hearing date.

RULE 7067-1 REGISTRY FUND

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

(b) Order Directing the Investment of Funds. The Clerk of the Court or his designee shall place the funds on deposit with the Court in some form of interest bearing account using the Court Registry Investment System ("CRIS") administered by the Administrative Office of the United States Courts. Any order directing the Clerk of the Court to invest funds deposited with the Court's CRIS pursuant to 28 U.S.C. § 2041 shall specify the amount to be invested. The Clerk of the Court shall take all reasonable steps to invest the funds within fourteen (14) days of the filing date of the order.

(c) Investment of Registry Funds.

(1) When the Court orders funds on deposit with the Court be placed in some form of interest-bearing account, CRIS shall be the only investment mechanism authorized.

(2) Money from each case deposited into 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 the Administrative Office of the United States Courts 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 the litigants and/or their counsel.

(d) Deductions of Fees.

(1) The custodian is authorized to deduct the investment services fee for the management of investments in the CRIS and the registry fee for maintaining accounts deposited with the Court.

(2) The investment services fee is assessed from interest earnings to the pool according

to the Court's Miscellaneous Fee Schedule and is to be assessed before a pro rata distribution of earnings to court cases.

(3) The registry fee is assessed by the custodian from each case's pro rata distribution of the earnings and is to be determined on the basis of the rates published by the Director of the Administrative Office of the United States Courts as approved by the Judicial Conference of the United States.

(e) **Withdrawal of a Deposit.** Any person seeking withdrawal of money deposited in the Court, pursuant to Fed. R. Civ. P. 67 and this local rule, shall provide a completed Internal Revenue Service Form W-9 with the motion papers seeking withdrawal of the funds. See 28 U.S.C. § 2042.

RULE 8007-1 STAY PENDING APPEAL (SUPERSEDEAS BOND)

(a) **Amount of Bond When Money Judgment Only.** A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment, plus 11% to cover interest and such damages for delay as may be awarded, plus an amount to be determined by the Court, to cover costs.

(b) **Amount of Bond When Judgment Not Solely for a Sum of Money.** When the stay may not be effected solely by the giving of the supersedeas bond, because the judgment or order is not solely for a sum of money, the Court, on notice, shall fix the amount of the bond and grant a stay on such terms as to security and otherwise as it may deem proper.

(c) **Objections.** Upon approval, a supersedeas bond shall be filed with the Clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. If the appellee raises objections to the form of the bond, or to the sufficiency of the surety, the Court shall hold a hearing on expedited notice to all parties.

RULE 8009-1 DESIGNATION OF RECORD ON APPEAL

(a) **Contents.** Each party preparing and filing a designation of the items to be included in the record on appeal shall set forth the document number from the Court's docket, filing date and the title or a description of each item designated.

(b) **PDF Format.** Immediately after filing a designation of the items to be included in the record on appeal, the filing party shall provide to the Clerk a copy of the items designated in PDF format on a CD, unless otherwise directed by the Court.

(c) **Noncompliance.** If a party fails to deliver the CD to the Clerk pursuant to paragraph (b) of this Rule, the Court shall prepare the CD at the party's expense. The expense shall be calculated in accordance with the Appendix entitled Bankruptcy Court Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1930.

Comment

The current fee charged for reproducing designated items to a c.d. is $30.

RULE 8024-1 REMAND BY APPELLATE COURT

If the order or judgment of the appellate court remands for further proceedings, the Court will notice a hearing or enter any further order as directed.

RULE 8024-2 ENTRY OF APPELLATE COURT'S ORDER OR JUDGMENT

When an order or judgment of an appellate court is filed with the Clerk, it shall be entered on the docket of the main bankruptcy case or adversary proceeding, as appropriate, without further order.

RULE 9001-1 DEFINITIONS

In these Local Bankruptcy Rules:

1) **"Administrative Order"** means any order signed by a bankruptcy judge that amends, modifies, or supplements procedures of the United States Bankruptcy Court for the Northern District of New York;
2) **"Administrative Procedure"** means any procedure published by the United States Bankruptcy Court for the Northern District of New York which may amend, modify, or supplement these Local Bankruptcy Rules and orders of the Court;
3) **"Allowed Contested Matters"** refer in chapter 13 cases to those provision which value collateral to establish the amount of a secured claim; set the interest rate for a secured claim; and assume and/or reject an unexpired lease and/or executory contract.
4) **"Appellate Court"** means the district court where the appeal was taken;
5) **"Bankruptcy Code"** and "Code" refers to the Bankruptcy Reform Act of 1978, as amended and set forth in Title 11 of the United States Code;
6) **"Clerk"** means the "clerk or deputy clerk" of the Court;
7) **"Court"** means the United States Bankruptcy Court for the Northern District of New York established by 28 U.S.C. §§ 151 and 152 or, with respect to a case which has not been referred, means the District Court;
8) **"District Clerk"** means the clerk or deputy clerk of the District Court;
9) **"District Court"** means the United States District Court for the Northern District of New York;
10) **"District Judge"** means any United States District Judge appointed to or sitting by designation in the Northern District of New York;
11) **"CM/ECF"** means case-management/electronic case filing;
12) **"ECRO"** means Electronic Court Recording Operator;
13) **"E-Orders"** means electronically submitted orders;
14) **"Fed. R. Bankr. P."** means the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms promulgated pursuant to 28 U.S.C. § 2075 in effect on the effective date of these Local Bankruptcy Rules, and as thereafter amended or enacted;
15) **"Judge"** means any United States Bankruptcy Judge appointed to or sitting by designation in the Northern District of New York, or with respect to a case which has not been referred, it means the District Judge;
16) **"Model Plan"** means the court-approved standard chapter 13 plan that is to be exclusively used by chapter 13 debtors in the Northern District of New York;
17) **"PACER"** means public access to court electronic records http://www.pacer.gov/psco/cgi-bin/links.pl;

18) **"Public Intake Counter"** means the counter located within the Clerk's office where the public may interact with the Clerk's staff;

19) **"Red-lined"** means a revised version of a document showing additions in bold or colored type and deletions crossed out;

20) **"Student Practitioner"** means a law student admitted to practice before the court pursuant to LBR 2014-2;

21) **"United States trustee"** means the United States trustee, acting United States trustee, assistant United States trustee, or attorney therefore, for the Northern District of New York, Region 2; and

22) **"United States Trustee Fee Guidelines"** means the United States Trustee Fee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 adopted by the Executive Office for United States Trustees on January 30, 1996, as subsequently revised.

The meanings of other words and phrases used in these Rules shall, unless inconsistent with the context, be construed in accordance with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

Comment

These definitions apply only to the interpretation of these Local Bankruptcy Rules.

RULE 9004-1 DOCUMENTS – REQUIREMENTS OF FORM AND CAPTION

(a) **Form Generally.** Any pleading, motion, and other document presented for filing shall be formatted as follows:

(1) Text, whether in the body of a document or in a footnote, must be:

- **(A)** A minimum of 12-point font;
- **(B)** Double-spaced, except that text in a block quotation or footnote may be single-spaced;
- **(C)** Plainly and legibly written, typewritten, printed or reproduced without defacing erasures or interlineations;
- **(D)** Printed on only a single-side of a page; and
- **(E)** Printed in black ink.

(2) A page must be:

- **(A)** Formatted with a one-inch margin on all four sides;
- **(B)** Consecutively numbered; and
- **(C)** Letter-size, 8 ½ x 11 inch layout.

(b) **Footnotes.** Extensive footnotes must not be used to circumvent page limitations.

(c) **Caption.** The caption on a document presented for filing shall contain the name of the Court, the title of the case, case number and chapter number assigned thereto, only the last four digits of the debtor's social security number and/or taxpayer identification number and, if pertinent to an adversary proceeding, the adversary proceeding name and assigned number. The caption shall also contain a short title that identifies the document and the name of the party on whose behalf it is filed.

Sample Caption:

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Alex B. Casper and Alice B. Casper,
(SSN: H: xxx-xx-1234; W: xxx-xx-4321)
Debtors.

Hearing Date: April 1, 2011
Hearing Time: 10:00 a.m.
Hearing Location: Syracuse

Case No. XX - XXXXX
Chapter 13

Objection by the Chapter 13 Trustee to Debtors'
Motion to Modify Chapter 13 Plan

=

(d) **Noncompliance.** The Court reserves the right to not consider a document that fails to comply with this Rule.

Comment

Paragraph (c) of this Rule should be read in conjunction with LBR 9022-1. The caption for a proposed judgment affecting the title or lien on real property or for the recovery of money or property has additional requirements.

RULE 9010-1 ATTORNEYS - NOTICE OF APPEARANCE

The filing and service of a notice of appearance in a case (as distinguished from the filing of a notice of appearance in an adversary proceeding) containing a request for service of papers filed in the case will be deemed to be a request for only such papers and notices which these rules or the Federal Rules of Bankruptcy Procedure require to be served on such party.

Comment

This Rule allows a party to avoid the unnecessary expense of service upon a party not otherwise entitled to service. Service of papers on an attorney is governed by Fed. R. Bankr. P. 7005. See also Fed. R. Bankr. P. 7004(g) and 9014(b).

RULE 9010-2 REQUIREMENT OF COUNSEL FOR NON-INDIVIDUALS

(a) **Non-Individual Debtor.** A non-individual debtor shall not be permitted to proceed under chapters 7, 9, 11, 12, or 15 without representation by an attorney duly admitted to the Northern District of New York.

(b) **Withdrawal of Counsel.** In the event that counsel for a non-individual debtor is permitted to withdraw, the case is subject to dismissal unless new counsel is substituted.

(c) **Non-Individual Entity.** A non-individual entity shall not be permitted to appear in any case without representation by an attorney duly admitted to the Northern District of New York.

RULE 9011-1 ATTORNEYS – DUTIES

[Deleted]

Comment

See LBR 2016-3 for specific required duties of debtor's counsel.

RULE 9011-2 DUTIES OF AN UNREPRESENTED DEBTOR OR PARTY

(a) **Contact Information.** An unrepresented debtor shall file with the Clerk a designation of the debtor's residential and mailing address, if different, and telephone number where the debtor can be reached during daytime hours. This designation shall be filed along with the debtor's initial filing in the case.

(b) **Notification of Change of Address.** An unrepresented debtor is required to file with the Clerk a notification of any change of address. The notice of an address change must contain the debtor's name, the case number, the responsible party's name (if different from debtor) and original address given to the Court, together with the debtor's complete new mailing address.

(c) **Local Address Requirement.** An unrepresented individual who is not a resident of the Northern District of New York may be required by the Court to designate a mailing address within the Northern District of New York. This requirement shall not apply to a party who has appeared without representation solely for the purpose of filing a proof of claim or interest.

Comment

A Pro Se Petitioner's Packet containing information for an unrepresented (pro se) debtor and information regarding pro bono resources is available on the Court's website: www.nynb.uscourts.gov.

RULE 9011-3 SIGNATURE AND ELECTRONIC FILING

(a) **Original Signature and Electronic Filing.** Any petition, list, schedule, statement, amendment, pleading, affidavit, or other document that requires an original signature or verification under Fed. R. Bankr. P. 1008 or an unsworn declaration, as provided in 28 U.S.C. § 1746, may be filed electronically by a registered user.

(b) **Signature Block.** In addition to the requirement under Fed. R. Bankr. P. 9011(a) that each paper states the signer's address and telephone number, the attorney's signature block shall include the signer's e-mail address and Northern District of New York attorney bar roll identification number.

(c) **Format of Electronic Signature.** A pleading or other document electronically filed shall indicate a signature, in the format "/s/name" unless the document has been scanned and shows the actual signature.

(d) **Unregistered Attorney's Use of a Registered Attorney's Login and Password is Not Permitted.** The attorney login name must match the attorney name signed on an electronically-filed document. Attorneys who are not registered with the Bankruptcy Court for the Northern District of New York, and therefore, have not been issued a login and password are not permitted to electronically file documents using the login and password of a registered attorney, unless the registered attorney is a co-filer of the document and that status is clearly apparent from the document.

(e) **Retention of Original Signature.** The document bearing the original signature must be retained by the filer for a minimum of two (2) years after the closing of the case and all time periods for appeals have expired unless the Court orders a different period. In an adversary proceeding, the parties shall maintain the original documents for a minimum of two (2) years after the proceeding is closed and all time periods for appeals have expired unless the Court orders a different period. These retention periods do not affect or replace any other periods required by other applicable laws or rules. Upon request of the Court, the filer must provide the document bearing the original signature for review.

(f) **Presentation of Original Petition at § 341 Meeting.** Counsel for the debtor shall bring to the § 341 meeting of creditors the original petition bearing the original signature of the debtor.

(g) **Electronic Signature on Stipulations or other documents requiring multiple signatures.** The following procedure applies when a stipulation or other document requires two or more signatures:

(1) The filer shall obtain the physical signatures of all parties required to sign the document. For purposes of this Rule a facsimile signature is permitted.

(2) Depending on the preference within each division of this district, the filer shall either (i) scan the document reflecting the actual script signatures and upload the same, or (ii) indicate each signature using the format "/s/name."

(3) The filing party originating the document shall maintain the document bearing original signatures as provided for in paragraph (e) above.

(h) **Proposed Order Submitted for Signature.** Unless otherwise directed by the Court, all proposed orders shall be submitted electronically in accordance with the requirements of the E-Orders program and shall be submitted after the scheduled time of the hearing or trial:

(1) A proposed order shall conform to the following:

(A) There must be a four (4) inch margin (i.e., four inches of white space) at the top of the first page of the proposed order;

(B) The character sequence ### must appear on the last page of the proposed order, centered, and at the end of the text; and

(C) The proposed order shall not contain a signature line, block or date.

(2) DO NOT ELECTRONICALLY FILE A PLEADING THAT CONTAINS A PROPOSED ORDER IN THE BODY OF THE PLEADING.

Comment

With reference to the electronic filing of signed stipulations, the Syracuse division requires a scanned document that reflects actual script signatures. The Albany and Utica divisions accept either: (i) a scan of the actual script signatures on the document; or (ii) a typed representation of each signature in the format "/s/ name" as set forth in subparagraph (f)(2) of this Rule.

RULE 9013-1 MOTION PRACTICE

(a) **Notice.** Unless otherwise ordered by the Court, notice of a motion shall be provided in the time and manner prescribed by the Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, and the Administrative Procedures.

(1) **Identification of Hearing Date, Time, and Location.** The date, time, and location of the hearing shall be included in the body of the notice of motion and above the case number in the caption.

(2) **Identification of Relief Sought and Statutory Basis.** The notice of motion shall set forth, in concise, plain terms, the specific relief sought, the party or parties against whom such relief is sought, and the rule or statute upon which the motion or application is predicated. Failure to provide the basis for relief sought is cause for the Court to deny the relief requested.

(b) **Notice of Electronic Filing.** When a pleading or other document is electronically filed, the CM/ECF system generates a "Notice of Electronic Filing" that is transmitted to the filing party and all registered users of the CM/ECF system having appeared in the case in which the filing is made.

(1) **Service Upon a Registered User Who Has Appeared in the Case.** Transmission of the Notice of Electronic Filing to a registered user via the CM/ECF system, equates with service of the pleading or other document by first class mail, postage prepaid.

(2) **Service Upon a Non-Registered User or a Registered User Who Has Not Appeared in the Case.** A party who is not a registered user of the CM/ECF system must be served with the filed pleading or other document in compliance with the Federal Rules of Bankruptcy Procedure and these rules.

(c) **Certificate of Service.** A certificate of service upon both registered and non-registered users of the CM/ECF system is required. The certificate must state the manner in which service or notice was accomplished on each party. The moving party shall file a certificate of service, not later than seven (7) days prior to the return date of the motion. Failure to file a certificate of service may result in the motion not appearing on the Court's calendar. Sample language for a certificate of service can be found in the Administrative Procedures.

(d) **Supporting Affidavit, Application, and Exhibits.**

(1) **Service Not Required.** Except as provided in the subparagraphs below, where a motion is made for the relief set forth in subparagraphs (a)(1), (2), (3), and (5) of LBR 2002-1 and the relief sought and the affected parties are clearly and unambiguously stated in the notice of motion, a supporting affidavit, application, or exhibits need not be served on all parties in interest. In such case, the notice of motion must clearly indicate that a copy of the supporting affidavit, application,

or exhibit is available, without charge, from the movant upon request. The movant must provide a contact name and telephone number and/or email address to which such a request may be made.

(2) **Service Required.** A complete copy of a motion with any supporting affidavit, application, and exhibits shall be served upon the United States trustee, the trustee, any official committee, opposing counsel, and any party that may be directly adversely affected by the granting of the requested relief.

(3) **Filing Requirements.** Any motion, supporting affidavit, and application must be filed with the Court. For filing requirements related to exhibits, see LBR 9013-2.

(e) **Timeliness of Filing and Service of a Motion.** Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly Rules 2002, 3007, and 4007), these rules, the Administrative Procedures, or as ordered by the Court, any motion shall be filed and served at least twenty-one (21) days before the return date of the motion.

(f) **Filing Deadlines.** An electronic filing is considered timely if received by the Court before midnight on the date set as a deadline, unless the Court or these rules specifically require an earlier filing.

(g) **Answering Papers.**

(1) **Timeliness of Filing and Service.** Answering papers shall be served and filed so as to be received not later than seven (7) days prior to the return date of the motion. The date, time, and location of the hearing shall be included above the case number in the caption.

(2) **Form.** Answering papers shall identify the date, time and location of the hearing above the case number in the caption.

(3) **Oral Opposition.** If the Court permits oral opposition to a motion without an answer or response being filed and adjourns the hearing, the answer or response substantiating the oral opposition shall be filed and served within seven (7) days of the original hearing date.

(h) **Chambers Copy.** A paper chambers copy is required for the matters listed below. The chambers copy is to be submitted to the Clerk contemporaneously with the electronic filing of the pleading or other document. The copy must be clearly marked as "ECF CASE – CHAMBERS COPY." The chambers copy need not contain a copy of the original signature. Unless otherwise directed by the Court, copies should be sent via regular mail or hand delivery, not by facsimile. Parties who fail to provide a chambers copy may be billed for copies.

(1) Albany Chambers:

(A) Notice of motion, motion, application, and certificate of service, except for chapter 13 trustee's motion to dismiss and to determine/expunge claim and chapter 7 trustee's final meeting notice;
(B) Opposition, response, or any pleading relating to a hearing;
(C) Opposition to disclosure statement in a chapter 11 case;
(D) Objection to confirmation of a chapter 11 plan;
(E) Pretrial statement;
(F) Memoranda of law and any pleading and other document filed in regard to a submitted matter; and
(G) All pleadings related to loss mitigation.

(2) Syracuse and Utica Chambers:

(A) Notice of motion, motion, application and certificate of service;
(B) Chapter 7 final meeting notice;
(C) Any pleading filed in an adversary proceeding;
(D) Pretrial statement;
(E) Memoranda of law and any pleading or other document filed in regard to a submitted matter;
(F) Any document regarding an appeal;
(G) Withdrawal of reference;
(H) Any objection pursuant to Fed. R. Bankr. P. 9033 ; and
(I) All pleadings related to loss mitigation.

(i) Adjournment Generally. The Court requires a written request for an adjournment that affirmatively indicates the consent of opposing counsel, states the reasons for the request, and states whether any previous request for an adjournment has been made. Chambers will notify the requesting party only if the request is denied.

(j) Procedure for Requesting Adjournment. An adjournment request shall be made by electronically filing not later than 2:00 p.m. the day prior to the hearing an Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters form or an Adjournment Request/Withdrawal/Settlement Notification for Confirmation Hearings form.

(1) Inability to Obtain Opposing Counsel's Consent. The inability to affirmatively indicate opposing counsel's consent to an adjournment will require an appearance for the purpose of requesting the adjournment, unless the Court directs otherwise.

(k) Withdrawal of Pleading or Other Document Generally. Any party who seeks to withdraw a motion, pleading or other document shall provide written notification to the Court and all parties who have filed and served related papers.

(l) **Procedure for Notification of Withdrawal.** Notice of the withdrawal of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters form.

(m) **Notification of Settlement – Generally.** Where movant and opposing counsel have agreed to the terms of an order, movant shall provide written notification to the Court and all parties who have filed and served responding papers.

(n) **Procedure for Notification of Settlement.** Notice of the settlement of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters form.

(o) **Motion to Avoid Judicial Lien Pursuant to § 522(f).** A motion to avoid a judicial lien pursuant to § 522(f) shall be served upon the judgment creditor pursuant to Fed. R. Bankr. P. 7004 and upon the attorney who obtained the judgment on behalf of the creditor.

Comment

The service fee for copies made by Clerk's Office staff is governed by the Bankruptcy Court Miscellaneous Fee Schedule.

RULE 9013-2 MOTION EXHIBITS

An exhibit and other attachment to a motion that is capable of being electronically imaged (scanned) should be electronically filed. An exhibit and attachment may be summarized and only the relevant excerpts electronically filed. The size of an electronic file should be no larger than 5 Megabytes (MB). An attachment larger than 5 Megabytes (MB) must be split into separate PDF files, all of which shall be attached to the pleading. Any proposed order submitted as an exhibit shall prominently bear on its face the word "EXHIBIT".

RULE 9013-3 DEFAULT MOTION PRACTICE

(a) **Default Notice.** Any motion listed in paragraph (c) of this Rule, if pursued on a default basis, shall clearly and conspicuously contain the following paragraph (which may be single-spaced):

IF YOU INTEND TO OPPOSE THIS MOTION, WRITTEN OPPOSITION MUST BE FILED WITH THE CLERK OF THE COURT AND SERVED ON MOVANT'S COUNSEL AT LEAST SEVEN (7) DAYS PRIOR TO THE RETURN DATE. IF YOU DO NOT FILE AND SERVE WRITTEN OPPOSITION, NO HEARING WILL BE HELD ON THE RETURN DATE AND THE COURT MAY GRANT THE MOTION AS UNOPPOSED.

(b) **Timely Opposition Not Filed.** If no opposition is timely filed and served upon movant's counsel as outlined in the above notice, the motion will not appear on the Court's motion calendar on the return date, and the motion will be considered by the Court without the necessity of any appearance by movant's counsel.

(1) **Timely Opposition Filed.** If written opposition to the motion is timely filed and served upon movant's counsel, the motion will appear on the Court's motion calendar on the return date and the parties are required to appear.

(2) **Proposed Order.** A proposed order should not be submitted for signature until after the return date of the motion.

(c) **Default Motions.** The default motion practice outlined in this Rule applies to the following types of motions:

(1) Abandon Property (§ 554(b));

(2) Allow Administrative Expenses Other Than Professional Fees (§ 503(b));

(3) Allow Administrative Expenses for Professional Fees in a chapter 13 case which are not in excess of $1,000.00, provided however, that said fees are requested for services rendered in connection with a motion brought by default under this Rule;

(4) Approve Settlement of Adversary Proceeding or Contested Matter (Fed. R. Bankr. P. 9019);

(5) Assume or Reject Executory Contract or Unexpired Lease (§ 365);

(6) Change Venue (28 U.S.C. § 1412);

(7) Compel Turnover of Property (§ 542);

(8) Convert (§§ 706, 1112(a)) or Dismiss Case (§§ 707, 1112(b), 1208, and 1307);

(9) Disallow or Modify Claim (§ 502);

(10) Dismiss for Failure to Pay Filing Fee (Fed. R. Bankr. P. 1006(a));

(11) Extend Time to Assume or Reject an Unexpired Nonresidential Lease (§ 365(d)(4));

(12) Extend Time to File Complaint (Fed. R. Bankr. P. 4004(b), 4007(c));

(13) Extend Time to File Plan and Disclosure Statement – Chapter 11 (§ 1121(d));

(14) Extend Time to File Plan - Chapter 12 and 13 (§§ 1221 and 1321);

(15) Extend Time to Pay Filing Fee (Fed. R. Bankr. P. 1006(b));

(16) Conduct Fed. R. Bankr. P. 2004 Exam;

(17) Object to Claimed Exemption (Fed. R. Bankr. P. 4003(b));

(18) Obtain Credit (§ 364(b), (c), and (d));

(19) Modify Chapter 12 or 13 Plan Post-Confirmation (§§ 1229 and 1329);

(20) Reopen Case (Fed. R. Bankr. P. 5010 and Local Bankruptcy Rule 5010)

(21) Terminate or Modify the Automatic Stay and/or Co-Debtor Stay, provided, however, that movant shall include in the proposed order granting a motion for relief from the stay a directive that (i) the case trustee be added as a necessary party to receive notice of the report of sale and surplus money proceedings; and (ii) closure of the case shall not constitute an abandonment of the trustee's interest, if any, in any surplus proceeds. (§ 362(d));

(22) Use Cash Collateral (§ 363(e));

(23) Revoke/Reconsider Order of Dismissal (Fed. R. Bankr. P. 9024);

(24) Waive Debtor's Appearance at Section 341 Meeting of Creditors;

(25) Application to Employ a Professional under § 327(e) in a Chapter 7 Case When the Trustee Seeks to Employ an Attorney to Pursue a Claim of the Estate Previously Held by the Debtor (§ 327(e));

(26) Confirm Automatic Stay Has Been Terminated (§ 362(j));

(27) Extend the Automatic Stay (§ 362(c)(3)(B));

(28) Seal a Document (Fed. R. Bankr. P. 9018); and

(29) Avoid Judicial Lien and Non-Possessory, Non-Purchase Money Security Interest (§ 522(f)).

(d) Rules 9013-1 and 9013-2 also apply to default motion practice.

(e) The default motion practice only applies to motions listed in paragraph (c) of this Rule. Any other motion shall require the appearance of movant's counsel, regardless of whether written opposition is filed.

Comment

Essential to the Court granting a default motion is proper service of the default motion evidenced by a timely filed certificate of service. In this regard, particular reference is made to Fed. R. Bankr. P. 3007 and 6007 and to the provisions of Fed. R. Bankr. P. 7004(b)(1)-(10), which are applicable to contested matters pursuant to Fed. R. Bankr. P. 9014.

Certain applications to employ a professional in a chapter 7 case are required to be on notice so that the debtor and debtor's counsel are cognizant that any professional retained by the chapter 7 trustee is retained to represent the bankruptcy estate's interest and not the debtor's interest, despite the fact the professional may have represented the debtor prior to the bankruptcy filing. See LBR 2014-1(e).

See also LBR 4001-1 with respect to a motion to lift the automatic stay.

RULE 9013-4 ORDERS AND JUDGMENTS

(a) **Orders.** Unless otherwise ordered by the Court, all oral orders of the Court, including any order resulting from a default motion under LBR 9013-3, shall be reduced to writing and submitted electronically as an e-order by the prevailing party not later than 30 days from the date of ruling, except for confirmation orders in chapter 12 and 13 cases. See LBR 3015-3.

(b) **Noncompliance.** Failure to comply with paragraph (a) of this Rule is cause for the Court to vacate its oral order and deny the relief requested.

(c) **Settlement of Order or Judgment.** Unless otherwise ordered by the Court, to settle an order or to settle a judgment shall mean the following:

(1) **Service.** The prevailing party or other party as directed by the Court shall serve a proposed order or judgment upon any opposing party who has appeared or has requested service thereof within 14 days of the hearing. Any counter proposal must be served not later than 7 days from the date of service. Counsel who served the proposed order or judgment shall submit it to the Court, together with any counter proposal.

(2) **Required Notice.** All proposed orders or judgments shall be served together with a separate notice which shall clearly and conspicuously contain the following paragraph (which may be single-spaced):

THE ATTACHED PROPOSED ORDER IS BEING SERVED UPON YOU ON [INSERT DATE]. PURSUANT TO LOCAL BANKRUPTCY RULE 9013-4, IF YOU INTEND TO SUBMIT ANY COUNTER PROPOSAL, YOU MUST SERVE UPON THE UNDERSIGNED A WRITTEN COUNTER PROPOSAL TO THE ORDER OR JUDGMENT ATTACHED HERETO NOT LATER THAN SEVEN DAYS FROM SERVICE HEREOF. IN THE EVENT THAT NO WRITTEN COUNTER PROPOSAL IS RECEIVED, THE ORDER OR JUDGMENT ATTACHED HERETO SHALL BE SUBMITTED TO THE COURT. IF A COUNTER PROPOSAL IS TIMELY RECEIVED, IT SHALL BE SUBMITTED, TOGETHER WITH THE PROPOSED ORDER, TO THE COURT.

(3) **Submission.** If counsel, having served the proposed order or judgment, does not receive any written counter proposal, then the proposed order or judgment shall be uploaded electronically as an e-order after counsel has electronically filed the original notice and certificate of service. If a written counter proposal is timely received, it shall be submitted in paper format, together with the proposed order in paper format, with a letter to the Court advising the Court of the parties' inability to settle the order or judgment. The letter shall also be electronically filed.

(d) Order with Attachment. If an order has an attachment, the character sequence ### must appear on the last page of the attachment, centered and at the end of the text.

Comment

Electronic orders shall be filed in the format prescribed in LBR 9011-3(h).

RULE 9013-5 EX PARTE ORDER – ORDER SHORTENING TIME – ORDER TO SHOW CAUSE

(a) Ex Parte Order.

(1) Application. A request for ex parte relief shall be made by affidavit or motion containing a clear and specific showing of cause for both ex parte action as well as the relief requested and whether previous application for similar relief has been made.

(2) Submission. The underlying affidavit or motion shall be filed electronically and the proposed ex parte order shall be uploaded immediately following the filing of the underlying application via the E-Orders menu. The application shall not be uploaded as one PDF document via E-Orders. If the relief requested would be defeated by prior notice, the application may be filed in paper format pursuant to paragraph (d) of this Rule.

(b) Order Shortening Time.

(1) Application. A request for an order shortening any specified notice period shall be made by application for an expedited hearing on the motion pursuant to Fed. R. Bankr. P. 9006(d). Such application shall contain a clear and specific showing by affidavit of good and sufficient reasons for shortening the notice period and whether previous application for similar relief has been made. Law office failure does not provide good and sufficient cause.

(2) Submission. The underlying motion shall be filed electronically, and then the application for an expedited hearing shall be filed electronically and linked to the underlying motion. A proposed order shortening time shall be emailed to Chambers in either Word or WordPerfect format and not filed on the docket. The proposed order shortening time should specify the proposed manner of service and provide for the proposed motion hearing date and time. Chambers must be notified before filing an application for an order shortening time.

(c) Order to Show Cause.

(1) Application. No order to show cause to bring on a motion will be entered except upon a clear and specific showing by affidavit of good and sufficient reasons why proceeding other than by notice of motion is necessary. Law office failure does not provide good and sufficient cause relief has been made. The papers shall also state whether a previous application for similar relief has been made.

(2) Submission. The underlying affidavit shall be filed electronically. A proposed order to show cause shall be emailed to Chambers in either Word or WordPerfect

format and not filed on the docket. Chambers must be notified before filing an order to show cause.

(d) Prior Notice of Temporary Restraining Order. Unless the purpose of an order to show cause would be defeated by prior notice, any party seeking an order to show cause which contains temporary restraining relief shall give an opposing party or, if known, counsel for an opposing party, at least 24 hours prior notice, if possible, of the presentation of the order to show cause and the underlying papers, including the date and time of the proposed presentment of said order to show cause to the Court. Proof of notice of presentment shall be filed with the Court.

RULE 9013-6 MOTION TO AVOID JUDICIAL LIEN – 11 U.S.C. § 522(f)(1)(A)

(a) **Contents.** A motion to avoid a judicial lien shall include:

(1) The date the bankruptcy was filed ("petition date");

(2) A description of the real property owned by the debtor on the petition date to which the lien has attached;

(3) A statement that the debtor has claimed the property as exempt on Schedule C, the amount of the claimed exemption and the statutory basis for the exemption (i.e., 11 U.S.C. § 522(b)(3) and N.Y. CPLR 5206(a), or, 11 U.S.C. § 522(b)(2) and (d)(1) and/or (d)(5));

(4) Whether the debtor owns the property solely or jointly and, if owned jointly, the nature of the debtor's ownership interest in the property (e.g., joint tenant, tenant by the entirety or tenant in common);

(5) Proof as to the value of the real property as of the petition date;

(6) The name(s) of the judicial lien creditor(s), listed in order of their priority, the amount(s) of the lien(s) sought to be avoided, and the recording information for each judgment;

(7) For each lien sought to be avoided, a statement that the lien does not secure a debt arising out of a domestic support obligation of the kind described in § 523(a)(5);

(8) A copy of the recorded judgment or transcript of the judgment that reflects recording information and the name and address of the attorney who obtained the judgment on behalf of the creditor;

(9) The name(s) of the holder(s) of each additional lien against the property, the nature of such lien(s) (e.g., mortgage, tax, or statutory) and proof of the amount of each lien as of the petition date;

(10) The address of all other real property owned by the debtor (i.e., rental property, commercial property);

(11) The date on which the debtor acquired an interest in the real property; and

(12) A showing that the lien impairs the claimed exemption in that the sum of the amounts described in subparagraphs (3), (6) and (9) above exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(b) **Service.** A motion to avoid a judicial lien pursuant to § 522(f) shall be served upon the judgment creditor pursuant to Fed. R. Bankr. P. 7004 and upon the attorney who obtained the judgment on behalf of the creditor.

Comment

With reference to establishing the fair market value of the property or the balances owed on outstanding liens as of the petition date, values contained in debtors' schedules shall not constitute adequate proof thereof. Among other things, the court may consider a broker's price opinion or appraisal as evidence of value of real property and a proof of claim, payoff letter or account statement as evidence of a lien amount.

Code § 522(f) operates solely with respect to judicial liens. See § 101(36) for the definition of "judicial lien." A statutory lien, as *e.g.* a mechanic's lien, cannot be avoided under this section.

See § 101(53) for the definition of "statutory lien." Papers submitted in support of the motion should allow the court to readily ascertain the nature of the lien. See *In re Schick*, 418 F.3d 321 (3d Cir. 2005) (discussing the distinction between judicial liens, which are avoidable under § 522(f), and statutory liens, which are not.)

RULE 9015-1 JURY TRIAL

If the right to a jury trial applies and a timely demand has been filed pursuant to Fed. R. Civ. P. 38(b), the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within twenty-one (21) days after the last date to file a pleading.

Comment

The Court is specifically designated to conduct jury trials in all proceedings commenced in cases filed under Title 11 of the United States Code where the right to a jury trial applies and where all the parties have expressly consented thereto, pursuant to Rule 76.1 of the Local Rules of Practice for the United States District Court for the Northern District of New York.

RULE 9018-1 FILING UNDER SEAL

(a) **Request to Seal a Document.** A party requesting the sealing of a document must file a motion with the Court with notice to parties in interest, unless the Court orders otherwise. The motion may be filed electronically or in paper format. The motion shall include the reason for the request to seal the document and, the parties, if any, who may have access to the document to be sealed. Care should be given to not disclose in the motion information sought to be sealed.

(b) **Order to Seal Document.** A document will not be sealed without a Court order. The proposed order submitted to the Court shall direct the Clerk to place the document under seal and it shall identify the parties, if any, who may have access to the document that is under seal. In addition, the proposed order shall contain the following recitation:

> The original sealed document filed with the Clerk may be destroyed sixty (60) days following disposition of the case/adversary proceeding, unless the original filer requests its return in writing.

(c) **Access to Document.** If the Court orders access to the document by other parties under paragraph (b) of this Rule, it shall be provided by the filer of the sealed document.

(d) **Filing Sealed Document with the Clerk.** The party requesting the sealing of a document must contact the Clerk's office to arrange for the filing of the document. The original document must be in a sealed envelope with the caption (case name, case number, adversary proceeding number, if applicable, and title of document) on the front of the envelope. A paper copy of the signed order granting the motion to seal must accompany the document to be sealed.

(e) **Disposition of Sealed Documents.** The original document filed with the Clerk under paragraph (d) of this Rule will be destroyed sixty (60) days after the closing of the case or adversary proceeding, unless the original filer requests its return in writing from the Clerk.

Comment

This motion may be pursued on a default basis under LBR 9013-3.

RULE 9019-1 ALTERNATIVE DISPUTE RESOLUTION

The mediation program developed by the Court, as set forth in the Appendix to these Rules and incorporated by reference, is adopted.

RULE 9022-1 NOTICE OF ENTRY OF JUDGMENT AND ORDER

(a) **Notice of Entry.** Whenever notice of entry of a contested order or judgment is required by Fed. R. Bankr. P. 9022, the party submitting said order or judgment shall provide the Clerk with a list of names and addresses of the parties contesting entry, including the name and address of the submitting party and the name and address of their respective attorneys.

(b) **Delivery of Notice of Entry.** The Clerk must mail or deliver by electronic means to the contesting parties a copy of a judgment or order showing the date the judgment or order was entered. Immediately upon entry of an order or judgment in a case or proceeding, the Clerk will electronically transmit to the registered users in the case or proceeding, a "Notice of Electronic Filing." Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Bankr. P. 9022. The Clerk must give notice in paper form to persons who have not consented to electronic service in accordance with the Federal Rules of Bankruptcy Procedure and these Rules.

(c) **Proposed Judgments and Orders.** Unless otherwise directed by the Court, all proposed judgments and orders must be uploaded electronically as an E-order. To facilitate the Clerk's compliance with Fed R. Bankr. P. 5003(c), any judgment or order that affects the title to or lien on real property or involves the recovery of money or property shall contain the word "Index" in the caption under the case number and/or adversary proceeding number.

Comment

An example of a caption that complies with paragraph (c) of this Rule appears below.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

JOHN DOE, Debtor.	Case No. XX - XXXXX Chapter 7
JOHN DOE, Plaintiff, v. JOE SMITH, Defendant.	Adv. Proc. No. XX-XXXXX **INDEX**

[INSERT TITLE OF DOCUMENT]

RULE 9025-1 SURETIES

(a) **Execution by Surety Only.** Whenever a bond, undertaking or stipulation is required, it shall be sufficient if the instrument is executed by the surety or sureties only.

(b) **Security for Bond.** Except as otherwise provided by law, every bond, undertaking or stipulation must be secured by:

(1) The deposit of cash or government bonds in the amount of the bond, undertaking or stipulation, or

(2) The undertaking of a corporate surety holding a certificate of authority from the United States Secretary of the Treasury.

(c) **Affidavit by Individual Surety.** In the case of a bond, undertaking or stipulation executed by an individual surety, each surety shall attach an affidavit of justifications, giving the full name, occupation, residence and business address, and showing that the individual is qualified as an individual surety under paragraph (b) of this Rule.

(d) **Persons Who May Not Act as Surety.** Unless otherwise ordered by the Court, a member of the bar, administrative officer, Court employee, the marshal, deputy or assistant, may not act as surety in any case, adversary proceeding, contested matter or action pending in this Court.

RULE 9027-1 REMOVAL AND REMAND

(a) **Removal – List of Parties.** In addition to compliance with the requirements in Fed. R. Bankr. P. 9027, a party removing a civil action to this Court shall file a list containing the name of each party to the removed case, and the names, addresses and telephone numbers of their counsel, or the party, if pro se.

(b) **Procedure After Remand.** If the Court remands the case, a certified copy of the order of remand shall be mailed by the Clerk to the clerk of the court from which the civil action or proceeding was removed, and that court may thereupon proceed with the case.

(c) **Service.** Service of the notice of removal or remand shall be served on all parties to the removed or remanded case, in the manner provided for in Fed. R. Bankr. P. 7004.

RULE 9034-1 NOTICE TO AND SERVICE UPON THE UNITED STATES TRUSTEE

(a) **Notice**. In addition to the notice required to be given to the United States trustee pursuant to Fed. R. Bankr. P. 2002(k) and 9034, the United States trustee has requested that any entity filing the following documents shall also transmit an electronic and paper copy to the United States trustee.

(1) Any pleading and other document related to the appointment of any Chapter 11 trustee or examiner pursuant to § 1104;

(2) Any pleading and other document related to a motion filed under § 363(b) in a Chapter 11 case;

(3) Any fee application and objection filed in connection with §§ 330 and 331 in a Chapter 11 case;

(4) Any disclosure statement, plan and amendment filed thereto, pursuant §§ 1121 and 1125; and

(5) All operating reports required under LBR 2015-2.

(b) **Service**. The time and manner of service shall conform to these Local Bankruptcy Rules, the Court's Administrative Procedures and the Federal Rules of Bankruptcy Procedure and shall be effected contemporaneously with service upon all other parties in interest.

Comment

The address for notice to or service upon the United States trustee is available at the United States trustee's website: www.justice.gov/ust/r02

This Rule is intended to supplement the requirements of notice to the United States trustee pursuant to Fed. R. Bankr. P. 2002(k), 5005(b), and 9034.

Motions filed in a chapter 7 or chapter 13 case shall not be served in paper form upon the United States trustee.

RULE 9037-1 PRIVACY PROTECTION - REDACTION OF A PERSONAL IDENTIFIER

(a) **Personal Identifier.** Unless otherwise ordered by the Court, in an electronic or paper filing made with the Court that contains an individual's social security number, taxpayer identification number, or birth date, the name of an individual, other than the debtor known to be and identified as a minor, or a financial-account number (individually and collectively referred to as "Personal Identifier"), a party or nonparty making the filing may include only:

(1) The last four (4) digits of the social security number and taxpayer identification number;
(2) The year of the individual's birth;
(3) The minor's initials; and
(4) The last four digits of the financial account number.

(b) **Responsibility for Redaction.** As noted in Fed. R. Bankr. P. 9037, responsibility for redacting a Personal Identifier in a pleading or other document filed with the Court rests solely with counsel and unrepresented parties filing such pleadings or other documents. The Clerk will not review each pleading or other document for compliance with Fed. R. Bankr. P. 9037 and this Rule and absent a request, as provided in paragraph (c), will not redact a Personal Identifier, erroneously including in a filing.

(c) **Request for Redaction of Personal Identifier.** Counsel and parties requesting the redaction of a Personal Identifier should file an ex parte application in paper format which shall include, as an exhibit, a copy of the redacted document and the proposed order granting the application.

(d) **Sanctions.** The Court may impose sanctions on counsel or any party who files a pleading or other document containing a Personal Identifier in violation of Fed. R. Bankr. P. 9037.

Comment

On occasion counsel or parties may have the need to file multiple requests for redaction of personal identifiers. Counsel or parties should contact the Clerk's office prior to filing the requests for redaction.

RULE 9037-2 TRANSCRIPT REDACTION

(a) **Notice of Intent to Request Redaction.** Within seven (7) days of the filing of the transcript, any person who wishes to redact from a transcript a Personal Identifier defined in Rule 9037-1 and as set forth in Fed. R. Bankr. P. 9037(a) must file a Notice of Intent to Request Redaction with the Clerk and serve a copy of the notice on the transcriber.

(b) **Request for Redaction Under Fed. R. Bankr. P. 9037(a).** A Request for Redaction must be filed within twenty-one (21) days of the filing of the transcript and served upon the transcriber. The Request for Redaction must include the location of the Personal Identifier by page and line number, as well as the type of Personal Identifier (e.g., social security number, taxpayer identification number, date of birth, minor's name or financial account number) to be redacted.

Comment

Redaction of information not covered in Fed. R. Bankr. P. 9037(a) must be done by a motion for a protective order pursuant to Fed. R. Bankr. P. 9037(d).

Appendix I – County Assignment and Hearing Locations

COUNTY	DIVISIONAL ASSIGNMENT	USUAL HEARING LOCATION*
Albany	Albany	Albany
Broome	Utica	Binghamton
Cayuga	Syracuse	Syracuse
Chenango	Utica	Binghamton
Clinton	Albany	Albany
Columbia	Albany	Albany
Cortland	Syracuse	Syracuse
Delaware	Utica	Binghamton
Essex	Albany	Albany
Franklin	Utica	Utica "Court Call"
Fulton	Utica	Utica "Court Call"
Greene	Albany	Albany
Hamilton	Utica	Utica
Herkimer	Utica	Utica
Jefferson	Syracuse	Syracuse
Lewis	Utica	Utica
Madison	Utica	Utica
Montgomery	Utica	Utica "Court Call"
Oneida	Utica	Utica
Onondaga	Syracuse	Syracuse
Oswego	Syracuse	Syracuse
Otsego	Utica	Binghamton
Rensselaer	Albany	Albany
St. Lawrence	Utica	Utica "Court Call"
Saratoga	Albany	Albany
Schenectady	Albany	Albany
Schoharie	Albany	Albany
Tioga	Syracuse	Syracuse
Tompkins	Syracuse	Syracuse
Ulster	Albany	Albany
Warren	Albany	Albany
Washington	Albany	Albany

*For cases assigned to the Utica division, all Chapter 11 matters are held on a Utica Chapter 11 motion calendar.

NOTE: Assignment location and hearing location are subject to change without notice on a case by case basis if the Court deems it necessary for ease of administration.

APPENDIX II - LOCAL FORMS

Adjournment Request/Withdrawal/Settlement Notification for Motion Calendar Related Matters - District Wide

Adjournment Request/Withdrawal/Settlement Notification for Confirmation Hearings - District Wide

Attorney Registration Form

Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Sections 522(q) and 1328

Chapter 12 Debtor's Certifications Regarding Domestic Support Obligations and Sections 522(q) and 1228

Chapter 11 Debtor's Certification Regarding Domestic Support Obligations and Sections 522(q)

Certification of Payment History on the Note and Mortgage Dated and Related Information

Certification Pursuant to Local Bankruptcy Rule 3015-1(b) and (c)

Filing Agent

Form Model Plan

Notice of Time Fixed for Filing Objections To and Hearing to Consider Confirmation of a Chapter 13 Plan

Order of Confirmation

Participant Registration Form

Payment Advice Form

Student Practice Authorization Form

APPENDIX III - ADMINISTRATIVE ORDERS

Administrative Order 09-09	Revised Local Procedure Governing Time Computation **ABROGATED January 1, 2012 - The language, policy and/or procedure set forth within this Order was incorporated into the Local Bankruptcy Rules for the Northern District of New York effective January 1, 2012 and are in compliance with the amendments to the Federal Rules of Bankruptcy, Civil, Appellate and Criminal Procedure effective December 1, 2009. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 09-08	Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys for the Albany and Utica divisions
Administrative Order 09-07	Debtor Counsel Fees in Chapter 13 Cases Filed in the Utica Division
Administrative Order 09-04	Employee Disclosure
Administrative Order 09-03	Appearance by Student Practitioners
Administrative Order 08-11	Appointment of Judge Robert E. Littlefield, Jr., as Chief Bankruptcy Judge
Administrative Order 08-02	Repeal of Order Adopting Interim Bankruptcy Rules **ABROGATED January 1, 2012 - Interim Rule 5012 has been replaced by a permanent national rule. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 08-01	Debtor Counsel Fees in Chapter 13 Cases Filed in the Albany Division
Administrative Order 07-05	Issuance of Chapter 13 Discharges **ABROGATED January 1, 2012 - The language, policy and/or procedure set forth within this Order was incorporated into the Local Bankruptcy Rules for the Northern District of New York effective January 1, 2012. Accordingly, this Order was abrogated effective January 1, 2012. (LBR 4004-1)**

Administrative Order 07-04	Increase to Transcript Fee Rates
Administrative Order 05-03	Disbursement of Sec. 1326 Pre-Confirmation Adequate Protection Payments in Chapter 13 Cases Filed on or after 10/17/05 **ABROGATED January 1, 2012 - The language, policy and/o procedure set forth within this Order was incorporated into the Local Bankruptcy Rules effective January 1, 2012. Accordingly, this Order was abrogated effective January 1, 2012. (LBR 3015-1)**
Administrative Order 05-02	Adoption of Interim Bankruptcy Rules **ABROGATED January 1, 2012 - Interim Rules have been replaced by a permanent national rule. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 04-05	Designation of Property Disposal Officer **ABROGATED December 1, 2010 - Chief Judge Robert E. Littlefield Jr. signed new designation. Accordingly, this Order was abrogated effective December 1, 2010.**
Administrative Order 04-04	Designation of Property Custodial Officer **ABROGATED December 1, 2010 - Chief Judge Robert E. Littlefield, Jr. signed new designation. Accordingly, this Order was abrogated effective February 1, 2010.**
Administrative Order 04-03	Delegation of Property Disposal Officer **ABROGATED December 1, 2010 - Chief Judge Robert E. Littlefield Jr. signed a new designation. Accordingly, this Order was abrogated effective December 1, 2010.**
Administrative Order 04-02	Designation of Automation Property Custodial Officer **ABROGATED December 1, 2010 - Chief Judge Robert E. Littlefield, Jr. signed new designation. Accordingly, this Order was abrogated effective December 1, 2010.**

Administrative Order 04-01	Delegation of Authority to Designate Property Custodial and Disposal Officers **ABROGATED February 1, 2010 - Chief Judge Robert E. Littlefield Jr. signed new appointment. Accordingly, this Order was abrogated effective February 1, 2010.**
Administrative Order 03-01	Electronic Case Filing **ABROGATED January 1, 2012 - The language, policy and/or procedure set forth within this Order was incorporated into the Local Bankruptcy Rules for the Northern District of New York effective January 1, 2012. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 02-03	Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means **ABROGATED January 1, 2012 - The language, policy and/o procedure set forth within this Order was incorporated into the Local Bankruptcy Rules effective January 1, 2012. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 02-02	Order Authorizing Clerk to Sign Ministerial Orders for Cases Assigned to Robert E. Littlefield, Jr., U.S. Bankruptcy Judge **ABROGATED January 1, 2012 - All the orders referenced within this order are executed by Chief Judge Robert E. Littlefield, Jr. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 02-01A	Order Authorizing Clerk to Sign Ministerial Orders **ABROGATED January 1, 2012 - All of the orders referenced within this order are executed by Chief Judge Robert E. Littlefield, Jr Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 02-01	Delegation of Duties to Clerk of the Court **ABROGATED January 1, 2012 - All of the orders referenced within this order are executed by Chief Judge Robert E. Littlefield, Jr. Accordingly, this Order was abrogated effective January 1, 2012.**

Administrative Order 01-01	Requirements for filing an Assignment of Claim **ABROGATED January 1, 2012.**
Administrative Order 00-02	Matter of the Termination of the Bankruptcy Appellate Panel Service of the Second Judicial Circuit, Effective 06/30/00.
Administrative Order 00-01	Designating Judge Robert E. Littlefield, Jr., of the NDNY to sit in the Bankruptcy Court - District of Vermont on an intermittent basis **ABROGATED January 1, 2012 – Bankruptcy Judge Colleen Brown was appointed in 2000. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 99-06	Designation of Bankruptcy Judge John J. Connelly **ABROGATED January 1, 2012 - All pending matters are completed. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 99-05	Designation of Bankruptcy Judge Robert E. Littlefield, Jr. **ABROGATED January 1, 2012 - All pending matters are completed. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 99-04	Designation of Bankruptcy Judge **ABROGATED January 1, 2012 - All pending matters are completed. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 99-03	Designation of Bankruptcy Judge **ABROGATED January 1, 2012 - All pending matters are completed. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 99-02	Designation of Chief Bankruptcy Judge Michael Kaplan **ABROGATED January 1, 2012 - All pending matters are completed. Accordingly, this Order was abrogated effective January 1, 2012.**
Administrative Order 99-01	Application of Fleet Bank to Withdraw and be Discharged from its Bond

Administrative Order Effective 01/02/97	Re: Default Motions (LBR 913.1k) **ABROGATED January 1, 2012 - The language, policy and/or procedure set forth within this Order was incorporated into the Local Bankruptcy Rules effective January 1, 2012. Accordingly, this Order was abrogated effective January 1, 2012.**

APPENDIX IV- MEDIATION PROGRAM FOR THE U.S. BANKRUPTCY COURT, NORTHERN DISTRICT OF NEW YORK

1.0 PRELIMINARY STATEMENT

Litigation in bankruptcy cases frequently imposes significant economic and other burdens on parties and often delays resolution of disputes. Alternate dispute resolution procedures have the potential to reduce delay, cost, stress and other burdens often associated with litigation. Mediation, in particular, allows parties more active involvement in determining the resolution of their disputes without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial on all issues not resolved through mediation.

Mediation is a process in which an impartial person, the mediator, facilitates communication between disputing parties and counsel to promote understanding, reconciliation and settlement. Mediation enables litigants to take control of their dispute and encourages amicable resolutions.

The mediator may, among other things, suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses and stimulate negotiations between opposing sides. The mediator is an advocate for settlement and uses the mediation process to ensure that the parties fully explore all areas of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render decisions on questions of fact or law or to force settlements.

2.0 ASSIGNMENT OF MATTERS TO MEDIATION

A matter may be assigned to mediation only by order of the Court ("Order of Assignment"). Upon motion of a party to the matter or the United States trustee, written stipulation, or by sua sponte order the court may assign to mediation any dispute arising in an adversary proceeding, contested matter or otherwise in a bankruptcy case. Federal Rules of Bankruptcy Procedure 7016 hereby is made applicable to all matters in which mediation is requested.

3.0 EFFECT OF MEDIATION ON PENDING MATTERS

The assignment of a matter to mediation does not relieve the parties to that matter from complying with any other court orders or applicable provisions of the United States Code, the Federal Rules of Bankruptcy Procedure, or the local rules of this court. Unless otherwise ordered by the court, the assignment to mediation does not delay or stay discovery, pretrial, hearing dates, or trial schedules.

4.1 THE MEDIATOR

4.2 Registration of Mediators/Mediation Administrator

The clerk of the court shall establish and maintain a register of persons (the "Panel") qualified under this section and designated by the court to serve as mediators in the Mediation Program.

4.3 Application and Certification of Mediators

4.3.1 Application and Qualification Requirements

Each applicant shall submit to the Mediation Administrator a statement of professional qualifications, experience, training, and other information demonstrating, in the applicant's opinion, why the applicant should be designated to the Panel. The applicant shall have completed eight hours of formal mediation training. The applicant shall submit the statement in the form attached hereto as Form A. The statement also shall set forth whether the applicant has been removed from any professional organization, or has resigned from any professional organization while an investigation into allegations of professional misconduct was pending, and the circumstances of such removal or resignation. This statement shall constitute an application for designation to the Mediation Program.

4.3.2 Court Certification

The court in its sole discretion shall grant or deny an application submitted pursuant to subsection 4.2.1 of this rule. If the court grants the application, the applicant's name shall be added to the Panel, subject to removal pursuant to section 4.4 of this rule.

4.3.3 Reaffirmation of Qualifications

Each applicant accepted for designation to the Panel shall reaffirm annually the continued existence and accuracy of the qualifications, statements and representations made in the application. Failure to comply with this section shall be grounds for removal under section 4.4.

4.4 Mediator's Oath or Affirmation

Upon appointment to the Panel or selection as a mediator, every mediator must sign a written oath or affirmation (see 28 U.S.C. '453), as if the person were a judge, and file the oath or affirmation with the Mediation Administrator.

4.5 Ethical Standards for Mediators

All mediators shall adhere to the Standards of Conduct for Mediators as promulgated by the American Arbitration Association ("AAA standards"). A failure to adhere to the AAA standards may constitute sufficient cause for the removal from the Panel. Such failure will not void any consensual agreement between the parties unless both parties consent to the rescission of the agreement or, on motion of any party to the mediation or, sua sponte, the court finds that the mediator's conflict of interest or failure to abide by the AAA standards caused actual prejudice to a party.

4.6 Removal from Panel

A person shall be removed from the Panel either at the person's written request to the Mediation Administrator or by court order for cause. If removed by court order, the personal shall not be returned to the Panel absent a court order obtained on motion to the Mediation Administrator supported by an affidavit sufficiently explaining the circumstances of such removal and the reasons justifying the return of the person to the Panel.

5.0 APPOINTMENT OF MEDIATOR

5.1.1 Selection by Parties

Within 15 calendar days of the date of service of the Order of Assignment of a matter to mediation, the parties to the matter to be mediated shall select a mediator, and an alternate mediator, and shall present the court with a proposed order of appointment. If such selection is not from the Panel, the parties shall submit with the proposed order of appointment a stipulation by the parties that the person is not on the Panel but is qualified to mediate the matter. If the court approves the parties= selection, immediately after entry of the order of appointment, the court shall notify the parties, the mediator and the alternate mediator of the appointment.

5.1.2 Selection/Appointment by Court

If the parties cannot agree upon a mediator within 15 calendar days of the date of service of the Order of Assignment, the court shall appoint a mediator and an alternate mediator from the Panel and shall notify the parties, the mediator, and the alternate mediator of such appointment.

5.2.1 Inability of Mediator to Serve

If the mediator is unable to serve due to a conflict or other reason precluding acceptance of the appointment, the mediator shall file and serve on all parties to the mediation and on the alternate mediator, within five calendar days after receipt of the notice of appointment, a notice of inability to accept the appointment. The alternate mediator then shall become the mediator if the alternate does not file and serve on all parties to the mediation a notice of inability to accept

the appointment within five calendar days after receipt of the original mediator's notice of inability to accept the appointment. If neither the mediator nor the alternate mediator can serve, the court shall appoint another mediator and alternate mediator.

5.2.2 Mediator's Prior Service

A mediator has the option of declining to accept the mediation based on having served as a mediator on four previous occasions within a period of one year.

5.3 Disqualification of Mediator

5.3.1 Disqualifying Events

Any person selected as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. § 144. Any person selected as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a judge. Any member of the bar who is certified and designated as a mediator pursuant to this rule shall not solely for that reason be disqualified from appearing or acting as counsel in any other matter or case pending before this court.

5.3.2 Inquiry by Mediator; Disclosure

Promptly after receiving notice of appointment, the mediator shall make inquiry sufficient to determine whether there is a basis for disqualification under subsection 5.3.1 of this rule. The inquiry shall include, but shall not be limited to, a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorney mediators, and by the applicable rules pertaining to the mediator's profession for non-attorney mediators. Within seven calendar days after receiving notice of appointment, the mediator shall file with the court and serve on the parties to the mediation either (a) a statement that there is no basis for disqualification under subsection 5.3.1 and that the mediator has no actual or potential conflict of interest or (b) a notice of withdrawal.

5.3.3 Objection Based on Conflict of Interest

A party to the mediation who believes that the assigned mediator and/or the alternate mediator has a conflict of interest promptly shall bring the issue to the attention of the mediator and/or the alternate mediator, as applicable, and to other parties to the mediation. If the mediator does not withdraw, the issue shall be brought to the court's attention by the mediator or any of the parties to the mediation. The court shall take such action as the court deems necessary or appropriate to resolve the alleged conflict of interest.

5.4 Mediator's Liability

There shall be no liability on the part of, and no cause of action shall arise against, any person who is appointed as a mediator pursuant to this rule on account of any act or omission in the course and scope of such person=s duties as a mediator. *See e.g. Wagshal v. Foster*, 28 F.3d 1249 (D.C. Cir. 1994).

6.1 COMPENSATION

6.2 Compensation of Mediator

The mediator shall serve on a *pro bono* basis and shall not require compensation or reimbursement of expenses. It is anticipated that the mediation shall not exceed six hours in length. If, at the conclusion of the six hours of mediation, it is determined by the mediator and the parties to the mediation that additional time will be necessary and productive in order to complete the mediation, then:

(1) If the mediator consents to continue to serve on a *pro bono* basis, the parties to the mediation may agree to continue the mediation conference; or

(2) If the mediator does not consent to continue to serve on a *pro bono* basis, the mediator's fees and expenses shall be on such terms as are satisfactory to the mediator and the parties to the mediation, subject to prior court approval if the estate is to be charged. The parties to the mediation shall share equally all mediation fees and expenses unless the parties to the mediation agree otherwise. The court may, in the interest of justice, determine a different allocation. In no case will compensation exceed an hourly rate of $150 per hour.

7.1 THE MEDIATION

7.2 Time and Place of Mediation Conference

After consulting with all counsel and *pro se* parties, the mediator shall schedule a convenient time and place for the mediation conference, and promptly give all counsel and *pro se* parties at least 14 calendar days= written notice of the time and place of the mediation conference. The mediator shall schedule the mediation to begin as soon as practicable.

7.3 Submission Materials

Not less than seven calendar days before the mediation conference, each party shall submit directly to the mediator, and serve on all counsel and *pro se* parties, any materials (the "Submission") the mediator directs to be prepared and assembled. The mediator shall so direct not less than 14 calendar days before the mediation conference. Prior to the mediation conference, the mediator may talk with the participants to determine what materials would be helpful. The Submissions shall not be filed with the court and the court shall not have access to them.

7.4 Attendance at Mediation Conference

7.4.1 Persons Required to Attend

The following persons personally must attend the mediation conference:

(1) Each party that is a natural person;

(2) If the party is not a natural person, a representative who is not the party's attorney of record and who has full authority to negotiate and settle the matter on behalf of the party;

(3) If the party is a governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend a settlement to the elected official or legislative body;

(4) The attorney who has primary responsibility for each party's case; and

(5) Other interested parties such as insurers or indemnitors, or one or more of their representatives, whose presence is necessary for a full resolution of the matter assigned to mediation.

7.4.2 Excuse

A person required to attend the mediation is excused from appearing if all parties and the mediator agree that the person need not attend. The court for cause may excuse a person's attendance.

7.4.3 Failure to Attend

Willful failure to attend any mediation conference, and any other material violation of this rule, shall be reported to the court by the mediator and may result in the imposition of sanctions by the court. Any such report of the mediator shall comply with the confidentiality requirements of section 8.1 of this rule.

7.5 Mediation Conference Procedures

The mediator may establish procedures for the mediation conference.

8.1 CONFIDENTIALITY OF MEDIATION PROCEEDINGS

8.2 Protection of Information Disclosed at Mediation

The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including but not limited to: (a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (b) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (c)) proposals made or views expressed by the mediator; (d) statements or admissions made by a party in the course of the mediation; and (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a mediation.

8.3 Discovery from Mediator

The mediator shall not be compelled to disclose to the court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation. Nothing contained in this section shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the court in writing, from filing a report as required by section 9.1, or from complying with the obligations set forth in section 10.

8.4 Protection of Proprietary Information

The parties, the mediator, and all mediation participants shall protect proprietary information during and after the mediation conference.

8.5 Preservation of Privileges

The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

9.0 RECOMMENDATIONS BY MEDIATOR

The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement recommendation memorandum to attorneys or *pro se* litigants, but not to the court.

10.0 POST MEDIATION PROCEDURES

10.1 Preparation of Orders

If a settlement is reached at a mediation, a party designated by the mediator shall submit a fully executed stipulation and proposed order to the court within twenty calendar days after the end of the mediation. If the party fails to prepare the stipulation and order, the court may impose appropriate sanctions.

10.2 Mediator's Certificate of Completion

Promptly after the mediation conference, the mediator shall file with the court, and serve on the parties and the Mediation Administrator, a certificate in the form provided by the court showing compliance or noncompliance with the mediation conference requirements of this rule and whether or not a settlement has been reached. Regardless of the outcome of the mediation conference, the mediator shall not provide the court with any details of the substance of the conference.

10.3 Mediator's Report

In order to assist the Mediation Administrator in compiling useful data to evaluate the Mediation Program, and to aid the court in assessing the efforts of the members of the Panel, the mediator shall provide the Mediation Administrator with an estimate of the number of hours spent in the mediation conference and other statistical and evaluative information on a form provided by the court. The mediator shall provide this report whether or not the mediation conference results in settlement.

11.0 WITHDRAWAL FROM MEDIATION

Any matter assigned to mediation pursuant to this rule may be withdrawn from mediation by the court at any time upon determination that the matter is not suitable for mediation. In addition, where mediation is brought about either by sua sponte order or motion, a party may withdraw from the mediation at any time after attending the first scheduled mediation conference only upon notice and motion. In order to withdraw, the withdrawing party shall, no later than five business days prior to any subsequently scheduled mediation activity, file with the court a motion seeking to withdraw from the mediation, briefly stating the reasons for the request and serve on the Mediator, Administrator, mediator and other parties (or their counsel). The method of service of the motion for withdrawal shall provide for actual receipt by the parties and the mediator no later than three business days prior to the next scheduled mediation activity. The court shall rule upon the motion without argument. All mediation activity shall be stayed pending an order from the court.

12.0 TERMINATION OF MEDIATION

Upon the filing of a mediator's certificate pursuant to section 10.2 or the entry of an order withdrawing a matter from mediation pursuant to section 11.0, the mediation will be deemed terminated, and the mediator excused and relieved from further responsibilities in the matter without further court order. If the mediation conference does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing pursuant to the court's scheduling order.

13.0 REEVALUATION/REVISION PROCEDURE

The purpose and administration of this rule shall be reviewed and reevaluated at such time and in such manner as the court deems appropriate.

Fee Schedule for the United States Bankruptcy Court (EFFECTIVE 12/01/2016)

Chapter	Filing Fee	Split/Sever	Reopen	Conv to Ch 7	Conv to Ch 11
7	$ 335.00	$ 335.00	$ 260.00	—	$ 922.00
12	$ 275.00	$ 275.00	$ 200.00	$ 60.00	NO FEE
13	$ 310.00	$ 310.00	$ 235.00	$ 25.00	$ 932.00
11	$1717.00	$1717.00	$1167.00	$ 15.00	—
9 or 15	$1717.00	$1213.00	$1167.00	$ 15.00*	n/a
				*Ch 9 Only	

Other Filing Fees

Amend Schedules D, E, F, Matrix, List of Creditors	$ 31.00	new
Motion to Lift Stay (362) or Abandonment	$ 181.00	new
Adversary Filing Fee (no fee to reopen)	$ 350.00	
Notice of Appeal	$ 5.00	
Appeal/Cross Appeal	$ 293.00	
Direct Appeal/Direct Cross Appeal (in addition to $298.00 for Notice and Appeal)	$ 207.00	
File a Misc. Document or Register a Foreign Judgment	$ 47.00	new
Withdrawal of the Reference	$ 181.00	new
Transfer of Claim Filing Fee	$ 25.00	
Sale Motion Free & Clear 11 USC § 363(f)	$ 181.00	new
Motion to Redact (Fed. R. of Bankr. P. 9037)	$ 25.00	*

*NO fee to reopen case if motion for redaction only.

Service Fees

NSF Charge for ANY form of Pmt Returned or Denied	$ 53.00		
Record Retrieval from Federal Records Center	$ 64.00		(1st box) $39.00 ea. Add'l box
SmartScan Electronic Record Retrieval- 100 page limit	$19.90		Plus $.65 per page
Search of Records (per name or item searched)	$ 31.00	new	
Microfilm or Microfiche Duplication	$ 5.00		
Reproduction of Audio Recording (tape or CD)	$ 31.00	new	
Photocopies produced via public terminal (per page)	$ 00.10		
Photocopy requests by mail or phone (per page)	$ 00.50		
Document Certification (plus copy charge)	$ 11.00		
Document Exemplification (plus copy charge)	$ 22.00	new	
Pro Hac Vice Registration (payable to Dsct Court Clerk)	$100.00		

Transcript of Hearing (typed)				
Turnaround Time (in days)	30	14	7	Daily
Cost per Page	$ 3.65	$ 4.25	$ 4.85	$ 6.05