

**LOCAL BANKRUPTCY RULES
FOR THE
NORTHERN DISTRICT OF NEW
YORK**



**EFFECTIVE
JANUARY 1, 1995**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN THE MATTER

of the

LOCAL BANKRUPTCY RULES

for the

Northern District of New York

ORDER

On behalf of the district court judges of the Northern District of New York and under the authority of Rule 9029 of the Federal Rules of Bankruptcy Procedure,

IT IS HEREBY ORDERED that the following Local Bankruptcy Rules are adopted by the United States District Court for the Northern District of New York. These Rules shall take effect January 1, 1995.

Dated: October , 1994

Thomas J. McAvoy, Chief Judge
U.S. District Court

LOCAL BANKRUPTCY RULES
FOR THE
NORTHERN DISTRICT OF NEW YORK

TABLE OF CONTENTS

<u>LOCAL RULE</u>	<u>SHORT TITLE</u>
Rule 101	Short Title; Applicability
Rule 106	Payment of Fees
Rule 107.1	Petitions, Lists, Schedules and Statements
Rule 107.2	Debtor's Affidavit to be Filed in Chapter 11 Cases
Rule 109	Filing and Notice of Amendments
Rule 114.1	Assignment of Cases and Proceedings; Reassignment; Objections to Assignment
Rule 114.2	Transfer of Cases or Proceedings
Rule 115.1	Substantive Consolidation
Rule 115.2	Joint Administration
Rule 119	Conversions
Rule 202.1	Noticing
Rule 202.2	Designation of Address
Rule 214.1	Employment of Professional Persons
Rule 214.2	Pro Bono Panel Appointments and Reimbursement of Expenses
Rule 215.1	Monthly Statements of Operations
Rule 215.2	Payments to Real Property Taxing Authorities in Chapter 12 and 13 Cases
Rule 215.3	Reporting Requirements for Chapter 12 and 13 Debtors Engaged in Business
Rule 216.1	Professional Compensation
Rule 216.2	Applications for Final Compensation
Rule 216.3	Amount, Notice and Timing of Payments to Debtor's Counsel in Chapter 13 Cases
Rule 302.1	Proofs of Claim
Rule 302.2	Creditors not Originally Scheduled Filing a Proof of Claim in Chapter 12 or Chapter 13

Cases

Rule 307.1	Objections to the Allowance of Claims
Rule 307.2	Debtor's Objection to Claims in Chapter 12 and 13 Cases
Rule 312	Valuation of Personal Property in Chapter 13 Cases
Rule 315.1	Notice of Filing of Plan and Confirmation Hearing in Chapter 12 or 13 Cases
Rule 315.2	Objections to Confirmation in Chapter 12 and 13 Cases
Rule 315.3	Modification of Chapter 12 or 13 Plan
Rule 316	Proposed Disclosure Statement and Plan: Disclaimer, Jurisdictional Statement
Rule 318.1	Certification of Ballots
Rule 318.2	Modification of Chapter 11 Plan Before Acceptance
Rule 320	Objection to Confirmation of a Plan; Withdrawal of Objection; Motions to Confirm by "Cram-Down"
Rule 322	Post-Confirmation Procedure and Closing of Chapter 11 Case
Rule 401.1	Motion to Obtain Credit
Rule 401.2	Obtaining Credit in Chapter 12 and 13 Cases
Rule 401.3	Emergency Refunds in Chapter 12 and Chapter 13 Cases
Rule 507	Photographing, Broadcasting, Televising and Recording in Courtroom and Environs
Rule 510	Motion to Reopen
Rule 604.1	Appraisals - Access and Confidentiality
Rule 604.2	Notice of Sale of Assets of the Estate Outside the Ordinary Course of Business in Chapter 11
Rule 604.3	Sale or Disposal of Both Real and Personal Property in Chapter 12 or 13 Cases
Rule 605	Auctions and Auctioneers
Rule 607	Books and Records; Storage
Rule 707	Notice of Claim of Unconstitutionality
Rule 716	Pre-Trial Conferences in Adversary Proceedings
Rule 726.1	General Provisions Governing Discovery
Rule 726.2	Discovery Motions

Rule 733	Interrogatories to Parties
Rule 741	Discontinuance and Settlement of Actions
Rule 755	Failure to Prosecute or Defend; Adjournments
Rule 767	Registry Accounts
Rule 805	Supersedeas Bond
Rule 816	Order, Judgment or Remand by Appellate Court
Rule 901	Definitions
Rule 904.1	Form of Papers for Filing
Rule 904.2	Filing Generally
Rule 910.1	Prohibition on Debtor Corporation Proceeding Pro Se
Rule 910.2	Attorney Practice Before the Court
Rule 910.3	Required Representation, Withdrawal or Substitution of Attorneys of Record
Rule 913.1	Motion Practice
Rule 913.2	Ex Parte Orders; Orders to Show Cause
Rule 917	Exhibits
Rule 924	Motions to Reinstate Dismissed Chapter 12 and 13 Cases
Rule 925	Sureties
Rule 934	Notice and Service Upon the United States Trustee

Rule 101. Short Title; Applicability

(a) Short Title. These local rules may be known and cited as the "Local Bankruptcy Rules".

(b) Applicability. The Local Bankruptcy Rules supplement the

Federal Rules of Bankruptcy Procedure. Except for those cases filed in Poughkeepsie by residents of Columbia, Greene and Ulster counties, these Local Bankruptcy Rules shall govern all proceedings in bankruptcy cases hereafter filed in the Northern District of New York. As to Northern District cases pending by debtors who are residents of Columbia, Greene and Ulster counties which were previously assigned to the judge sitting in Poughkeepsie, the Local Bankruptcy Rules for the Southern District of New York shall govern.

Comment

Under the authority of FRBP 9029, the district court may make and amend rules of practice and procedure not inconsistent with the Federal Rules of Bankruptcy Procedure and which do not prohibit or limit the use of the official forms.

These Local Bankruptcy Rules, effective January 1, 1995, supersede and rescind the Local Bankruptcy Rules adopted April 15, 1989. They employ a three numbering system (absent the "o") which corresponds each Rule to the most closely associated Federal Rule of Bankruptcy Procedure. A correlation table further identifies the Local Bankruptcy Rules which serve to supplement the referenced Federal Rule of Bankruptcy Procedure.

There may be standing orders issued by a Judge which may have the effect of modifying or abrogating one or more of these Local Bankruptcy Rules.

Rule 106. Payment of Fees

Unless otherwise ordered by the court, the clerk shall not be required to render any service for which a fee is prescribed, either by statute or by the Judicial Conference of the United States, including the acceptance of a document for filing, unless the fee for that service is paid in advance, or, (1) an order is granted pursuant to FRBP 1006(b)(1) to pay the filing fee for a voluntary petition by an individual in installments; or, (2) an

order is entered pursuant to 28 U.S.C. §1915(a) granting in forma pauperis status for an adversary proceeding or appeal.

Comment

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 or an appeal are authorized by 28 U.S.C. §1930(b) and set forth in the Judicial Conference Schedule of Fees.

In this district, petitioners are not allowed to proceed in forma pauperis when filing bankruptcy petitions. 28 U.S.C. §1930(a).

Upon application and order of the court, adversary proceedings and appeals may be filed in forma pauperis. As required by 28 U.S.C. §1915(a), a party seeking to proceed in forma pauperis must make affidavit: (1) advising that the person is unable to pay the fee or give security therefor; and, (2) stating the nature of the action, defense or appeal and the affiant's belief as to entitlement to relief.

Rule 107.1. Petitions, Lists, Schedules and Statements

(a) Where to File. Petitions may be filed with the clerk or in any office of the clerk.

(b) Number of Petitions, Lists, Schedules and Statements. In all cases filed under chapter 7, chapter 12 or chapter 13, an original and four copies of the petition, lists, schedules and statements and amendments thereto shall be filed with the clerk. In cases filed under chapter 9 or chapter 11 of the Code, an original and six copies of the petition, lists, schedules, statements and amendments thereto shall be filed with the clerk.

(c) Matrix. In addition to the filing requirements of FRBP 1007, each petition shall be accompanied by a matrix submitted in proper form and typeface compatible with the optical scanner used in conjunction with the court's automated system (BANCAP) and must contain the name and address of the United States trustee and all creditors and other parties in interest. The two letter state identifier as prescribed by the United States Post Office shall be used with no periods included. Zip codes MUST appear on the same line as the city/state.

(d) Certification of Matrix. The debtor or attorney for the debtor must certify separately on the court supplied "Certification of Mailing Matrix" form that the matrix contains the names, addresses and zip codes of all creditors and parties in interest which appear in the schedules of liabilities, list of creditors, and list of equity security holders including any amendment(s) thereto.

(e) Matrix of Twenty Largest Unsecured Creditors. The list of the twenty largest unsecured creditors filed pursuant to FRBP 1007(d) shall be accompanied by a separate matrix, in proper form and typeface compatible with the optical scanner used in conjunction with the court's automated system (BANCAP), listing only those unsecured creditors. The matrix is to be certified in a form similar to (d) above, certifying under penalties of perjury that it contains the correct names, addresses and zip codes of the twenty largest unsecured creditors.

(f) Corporate Resolution/Partnership Declaration. A voluntary petition or consent to an involuntary 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. A voluntary petition or consent to an involuntary petition filed by a partnership shall be accompanied by appropriate authorization, duly attested to by all general partners, authorizing such filing.

cont'd., page 2 of Rule 107.1

(g) Involuntary Petitions. An involuntary petition shall be filed in the number mandated by subsection (b) of this rule. Such filing shall also include a matrix, in proper form and typeface compatible with the optical scanner used in conjunction with the court's automated system (BANCAP), containing the name and address, including zip codes and any post office address, of the United States trustee and all petitioning creditors, any attorneys for petitioning creditors and other parties in interest.

Comment

Subparagraphs (c), Matrix, (e), Matrix of Twenty Largest Unsecured Creditors, and, (g), Involuntary Petitions, incorporate requirements that matrices be compatible with the optical scanner used in conjunction with the court's automated case management system (BANCAP).

Local Bankruptcy Rule 107.1 should be read with Local Bankruptcy Rules 106, 107.2, 119 and 904.1.

The address of the United States trustee in Albany is 50 Chapel Street, Albany, New York 12207 and in Utica is 10 Broad Street, Room 105, Utica, New York 13501. These addresses are subject to change and should be verified.

Rule 107.2. Debtor's Affidavit to be Filed in Chapter 11 Cases

(a) Contents of Affidavit. A debtor in a chapter 11 case shall file an original and one (1) copy of an affidavit setting forth:

(1) if the case was originally commenced under chapter 7, 12 or 13, the name and address of any trustee appointed in such chapter 7, 12 or 13 case and the names and addresses of the members of any creditors' committee elected in the chapter 7 case;

(2) the names and addresses of the members of any

committee 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 any committee and the date of its formation;

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

(4) if the debtor failed to file its Summary of Schedules with the initial filing, a summary of the debtor's assets and liabilities;

(5) 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;

(6) if the debtor failed to file its Schedule A, Real Property, and/or, Schedule G, statement of executory contracts and unexpired leases, with the initial filing, a list of premises owned, under lease, or held under other arrangement from which the debtor operates its business; and

(7) if the debtor failed to file its statement of financial affairs with the initial filing, the location of the debtor's 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.

(b) Additional Information if Business Continues. If the debtor intends to continue the operation of its business, the affidavit shall so state and set forth:

(1) the estimated amount of the weekly payroll payable to employees (exclusive of the officers, partners, stockholders, and directors) for the 30 day period following the filing of the chapter 11 petition;

cont'd., page 2 of Rule 107.2

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

a. if a corporation, to officers, stockholders, and directors;

b. if an individual or a partnership, to the individual or the members of the partnership; and

c. if a consultant has been retained, to such consultant.

(3) a schedule setting forth for the 30 days 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.

(c) When to File. In a voluntary chapter 11 case, the affidavit shall be filed within 5 days of the filing of the petition. In an involuntary chapter 11 case, the affidavit shall be filed within 5 days after entry of the order for relief or after the filing of a consent to the petition, whichever is earlier.

(d) Waiver of Requirements. On application of the debtor and notice to the United States trustee showing that it is impracticable or impossible to furnish any of the foregoing information, the court may dispense with any of the foregoing provisions, except that the affidavit shall contain the information required by paragraphs (1), (2), (3) and (4) of subdivision (a) of this rule.

Comment

This rule supplements FRBP 1007.

Rule 109. Filing and Notice of Amendments

(a) Caption. Each amendment to the petition, lists, schedules and statements shall contain a caption complying with FRBP 1005, 9004(b) and Local Bankruptcy Rule 904.1(b) and include the word "Amended" in the designation of the character of the paper.

(b) List of Creditors and Schedules of Liabilities. Amendments to the list of creditors and schedules of liabilities shall include only the additional creditors.

(c) Schedules of Assets and Liabilities. Any amendment to the schedules of assets and liabilities which affects the amount claimed shall be totalled on both the amended schedule(s) as well as on the amended summary of schedules.

(d) Mailing Matrix. Any amendment to the schedules of liabilities or list of creditors which adds a party not previously listed shall include an amended, certified mailing matrix, listing, without duplication, only the additional creditor(s) with complete mailing address(es).

(e) Amended List of Creditors. If the petition is filed with a list of debtor's creditors and their addresses in lieu of completed schedules as permitted by FRBP 1007(c), and thereafter, the debtor wishes to include an additional creditor in the completed schedules "D", "E" or "F" who was not previously included in the original listing, it shall be treated as an amendment and it shall be incumbent upon the debtor in addition to filing an amended certified mailing matrix as required by Local Bankruptcy Rule 109(d) as well as an Amended List of Creditors to notice the added creditor(s) of any matters previously noticed by the Clerk including a copy of the official notice of any section 341 meetings and to file a certificate of service reflecting the same.

(f) Notice of Amendments. In the event the petition, lists, schedules or statements are amended pursuant to FRBP 1009, the debtor shall forthwith serve notice of such amendment upon the United States trustee and any entity affected thereby. The notice of an amendment to add creditors shall include the last day fixed by the court to object to discharge or to determine dischargeability and the last day fixed by the court for filing claims.

(g) Certificate of Service. Upon filing an amendment, a certificate reflecting service of notice of the amendment shall be filed simultaneously with the clerk.

cont'd., page 2 of Rule 109

(h) Amendment to Claim of Exemption. An amendment to a claim of exemption pursuant to FRBP 4003(a) shall be filed and served by

the debtor or dependant of the debtor on the trustee, the United States trustee and all creditors. If the certificate of service required by subsection (g) of this rule is not filed with the amendment to claim of exemption, the time pursuant to FRBP 4003(b) within which the trustee or a party-in-interest may object to the amended claim of exemption is extended for a period of 30 days from the date the certificate of service is filed.

Comment

Amendments shall be filed in the form prescribed in Local Bankruptcy Rule 904.1 and in accordance with Local Bankruptcy Rule 107.1.

Subsection (h) of this rule implements an automatic extension within which a party may object to an amended claim of exemption for a period of 30 days from the date the certificate of service of the amended claim is filed with the court.

Rule 114.1. Assignment of Cases and Proceedings; Reassignment; Objections to Assignment

(a) Assignment of Cases and Proceedings. All cases filed by residents of Albany, Clinton, Essex, Franklin, Fulton, Jefferson, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Warren and Washington counties will be assigned to the

judge sitting in Albany; cases filed by residents of Broome, Cayuga, Chenango, Cortland, Delaware, Hamilton, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Tioga and Tompkins counties will be assigned to the judge sitting in Utica; and, cases filed by residents of Columbia, Greene and Ulster counties will be treated as Northern District cases and assigned to the judge sitting in Albany when filed in Albany.

Except as otherwise provided in the Code and Federal Rules of Bankruptcy Procedure, the assignment of a case to a judge includes the assignment of all proceedings arising under Title 11 or arising in or related to a case under Title 11.

(b) Reassignment. Irrespective of the case assignment, any judge may transfer to another judge within the district any case, contested matter or adversary proceeding. If a case is reassigned from the judge sitting in Poughkeepsie to either Albany or Utica, these Local Bankruptcy Rules shall govern.

(c) Objections to Assignment. All objections to assignment or reassignment of cases, adversary proceedings or contested matters shall be directed to the attention of the chief judge.

Comment

Cases filed by residents of Columbia, Greene and Ulster counties are treated as Southern District cases when filed in Poughkeepsie. They are assigned to the judge sitting in Poughkeepsie and governed by the Local Bankruptcy Rules for the Southern District of New York, as provided by Local Bankruptcy Rule 101(b).

Rule 114.2. Transfer of Cases or Proceedings

After the expiration of ten days from the date of entry of an order transferring a case or proceeding from this district to another district, the clerk shall promptly mail to the court to which the case is transferred: (1) certified copies of the docket and the opinion and order of transfer; and, (2) the originals of all other papers on file in the case or proceeding.

Rule 115.1. Substantive Consolidation

(a) Motion. Unless otherwise ordered by the court, motions for substantive consolidation shall be presented in each of the subject cases, shall be served on all creditors and parties in interest, and shall designate one of the subject cases as the main case.

(b) Joint Cases. In all cases filed by a husband and wife under section 302 of the Bankruptcy Code, the court will presume joint administration of the case and, in an asset case, the consolidation of the assets and liabilities shall be combined in a single pool to pay creditors unless and until a motion is made by a party in interest to terminate the consolidation, which motion

shall be made prior to or at the final hearing. At the request of one or both of the joint debtors, and upon payment of the required fee, the joint bankruptcy case may be divided into two separate cases, after which either debtor may convert his or her individual case or move the court for separate dismissal.

(c) Matrix. Prior to the entry of an order of substantive consolidation, movant shall request copies from the clerk 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 primary matrix from the main case, without duplications or omissions. The matrix must be in compliance with the filing requirements as set forth in Local Bankruptcy Rule 107.1 and shall be filed with a proposed order of substantive consolidation no later than five days from the hearing date. NOTE: This requirement shall not apply to the consolidation of a joint case.

(d) Order. An order of substantive consolidation shall identify the main case and shall be submitted in sufficient number to permit an original order to be filed in each of the affected cases.

(e) Caption, Docket Entries and Filing. Prior to the entry of an order of substantive consolidation, all papers shall be captioned by their individual titles. Once separate cases have been ordered consolidated, they will be treated as one case for all purposes, with a single case number, caption, claims register and docket.

(f) Compliance. Failure to timely file the certified supplemental matrix with the proposed order in numbers sufficient for entry in all affected cases is cause for the court to vacate the oral direction of substantive consolidation.

Rule 115.2. Joint Administration

(a) Motion. Unless otherwise ordered by the court, motions for joint administration shall be presented in each of the subject cases, shall be served on all parties in interest, and shall designate one of the cases to which the motion applies as the main case.

(b) Matrix. Prior to the entry of an order of joint administration, movant shall request copies from the clerk 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 in the primary matrix of the main case, without duplications or omissions. The matrix must be in compliance with the filing requirements as set forth in Local Bankruptcy Rule 107.1 and shall be filed with a proposed order of joint administration no later than five days from the hearing date.

(c) Order. An order of joint administration shall identify the main case and shall be submitted in sufficient number to permit an original order to be filed in each of the cases affected thereby.

(d) Caption, Docket Entries and Filing. Prior to the entry of an order of joint administration, all papers shall be captioned by their individual titles. Subsequent to the entry of an order of joint administration, all papers shall be captioned in the case or cases to which they pertain and shall be entered and filed in the main case. When documents pertain to all of the jointly administered cases, there shall be no special designation on the docket or claims register. When documents pertain to one or more of the jointly administered cases but not all such cases, the docket or claims register will identify the specific case or cases to which the items relate. The clerk shall rely upon the document's caption in determining the case or cases to which a particular document applies.

(e) Compliance. Failure to timely file the certified supplemental matrix and the proposed order in numbers sufficient for entry in all cases is cause for the court to vacate the oral direction of joint administration.

Rule 119. Conversions

(a) Filing of Additional Lists, Schedules, Statements. In conversions from chapters 11, 12 and 13, the previously filed petition, lists, schedules and statements 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 submitted for filing.

(b) Number of Lists, Schedules, Statements. Unless otherwise

ordered by the court, any lists, schedules or statements due upon entry of an order or notice of conversion, including the schedule of unpaid debts incurred after commencement of the superseded case, shall be filed in the numbers required by Local Bankruptcy Rule 107.1(b).

(c) 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 FRBP 1019(5), the clerk shall notice the creditors listed on the schedule regarding the filing of post-petition claims pursuant to FRBP 1019(6). When the schedule is untimely filed, the filer shall provide the foregoing notice.

(d) Supplemental Matrix. Any lists, schedules or statements filed as a result of a conversion which include creditors not previously listed within the case matrix, shall be accompanied by a supplemental certified matrix prepared as directed by Local Bankruptcy Rule 107.1(c) and (d) listing, without duplication, only those additional creditors.

(e) Conversion of Chapter 7 or 13 Cases to Chapter 11 or 12 -Administrative Information. Immediately upon the conversion of a chapter 7 or chapter 13 case to chapter 11 or 12, the debtor must apprise the court in writing of its estimated number of employees and the estimated number of equity security holders. Failure of the debtor to supply this information shall permit the clerk to presume for purposes of the statistical information required by 28 U.S.C. §604 that the response to both questions is "none".

cont'd., page 2 of Rule 119

Comment

FRBP 1007(c) treats a previously filed petition, list, schedule and statement in a chapter 7 case as 'deemed filed' in a superseding case. Conversely, FRBP 1019 addresses the effect of previously filed lists, schedules and statements in prior chapter 11, 12 and 13 cases when they are converted to chapter 7.

Subsection (a) of this rule mimics these provisions as to all other conversions. This rule makes clear that upon conversion, only the additional lists, schedules, and statements required by the new chapter are to be filed.

The Director of the Administrative Office as administrative officer of the courts collects certain statistical information pursuant to duties outlined in 28 U.S.C. Section 604. Some of this information is compiled by the responses obtained to six questions which appear in a "Statistical/Administrative Information Box" on the face of the voluntary petition. Two of the questions apply only to chapter 11 and 12 cases. Subsection (d) of this rule streamlines the clerk's duty with respect to gathering this data by requiring the debtor to supply the missing information when the case is subsequently converted to chapter 11 or 12, and, by supplying a presumption to permit the clerk to supply data on the case when the information is not forthcoming.

Rule 202.1. Noticing

(a) Notice to All Creditors. As authorized by FRBP 2002(a), (b) and (f), the court directs the proponent, excepting the office of the U.S. trustee, to give notice of:

(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) a hearing on all applications for compensation or reimbursement of expenses totaling in excess of \$500;

(6) the time fixed for filing objections and the hearing to consider approval of a disclosure statement;

(7) the time fixed for filing objections and the hearing to consider confirmation of a plan; and

(8) the notice of entry of an order confirming a chapter 11 plan.

(b) Limited Notice. As permitted by FRBP 2002(i), required notices of hearings on approval of a compromise or settlement and on applications for compensation or reimbursement of expenses totaling less than \$25,000 may be mailed only to the committees or their authorized agents, to the United States trustee and to the creditors and equity security holders who file with the court a request that all notices be mailed to them.

(c) Certificate of Service. Upon request, the clerk shall provide the noticing party with a copy of the updated certified matrix for the purpose of preparing address labels. A certificate reciting all parties upon whom service of any notice has been made shall be filed with the clerk's office within five days of effecting service and no later than three days prior to the return date of the hearing.

Rule 202.2. Designation of Address

(a) Pro Se Party. An individual appearing pro se shall file with such individual's initial notice or pleading a designation of the individual's residence address and mailing address, if different, and telephone number where the party can be reached during daytime hours. An individual appearing pro se 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 an individual who has appeared solely for the purpose of filing a proof of claim or interest.

(b) Debtor's Change of Address. If the address of the debtor is changed at any time during the administration of the case, the

debtor shall immediately provide written notice of such change to the court, the United States trustee, any trustee or committee, and any other parties affected thereby.

(c) Return Address on First Meeting and Discharge Notices. The clerk shall place the name and address of the debtor's attorney of record as the return address on all §341 meeting of creditors and discharge notices sent out by the bankruptcy court to all creditors and other parties in interest. In the case of pro se debtors, the name and address of the debtor shall appear as the return address on the notice.

(d) Duty to Renotify on Returned Mail. Should any such notices referred to in (c) above be returned, debtor's counsel or the pro se debtor shall send out the notice to any corrected address for the given party-in-interest.

(e) Duty of Party in Interest to Notify Clerk of Change of Address . Any change of address of an interested party should be filed with the clerk and such notice of the change must contain the debtor's name, case number, the party's name and original address given to the court together with the party's complete new mailing address.

Comment

This rule is intended to facilitate the service of papers.

Rule 214.1. Employment of Professional Persons

(a) Requirements of the Application, Affidavit and Order.

(1) Application. An order approving the employment of a professional person pursuant to Section 327 of the Code shall be made only on application by the trustee, debtor-in-possession or committee. The application shall fully disclose the reason the professional should be hired, the professional services to be rendered, the proposed terms and conditions of employment including any arrangement for a retainer, the source of any retainer, the hourly rates for professionals and paraprofessionals, any contingent fee arrangement and all of the professional's connections with the debtor or any party in interest including

disclosure of the terms of any guaranty agreements 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 that the professional may not be disinterested or may hold an interest adverse to the debtor, as defined in Section 101(13) of the Code.

(3) Order. The order of appointment shall clearly state 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.

(4) Effective Date of Appointment. When an application for employment is approved by the court, the appointment may be deemed effective as of the date of the initial receipt of the application by the court or office of the United States trustee.

(b) Auctioneers. In addition to the requirements of subdivision (a)(1) of this Rule, an application seeking an order of appointment of an auctioneer shall:

(1) set forth in the application that the auctioneer is duly licensed, the license number and the place of the auctioneer's business.

(2) provide a copy of the surety bond referred to in Local Bankruptcy Rule 605(c) intended to cover the assets of the estate, or, where a blanket bond has been approved by the United States trustee and is on file with the court, the application shall include a copy of the bond and identify whether or not the applicant is in possession of funds or will, within a reasonable period of time, come into possession of funds or assets in any other estate in which he has been appointed auctioneer and the case name and number thereof.

cont'd., page 2 of Rule 214.1.

Comment

This rule is intended to supplement FRBP 2014(a), and information required by this rule must be submitted contemporaneous

with the information required therein. As required by Local Bankruptcy Rule 934, the United States trustee must be served with a copy of the application and proposed order. FRBP 5002 sets forth certain restrictions applicable to professional appointments. Professionals appointed must comply with the continuing disclosure requirements of FRBP 2016(b).

Subsection (a)(3) requires that the proposed order approving the appointment make clear the necessity of obtaining court approval before any fees for post-petition services are paid. This includes the application of any pre-petition retainer received to cover post-petition services.

Rule 214.2. Pro Bono Panel Appointments and Reimbursement of Expenses

(a) Pro Bono Panel Appointments. The court shall work with local bankruptcy bar and other associations to insure that attorneys with the required expertise in the handling of bankruptcy matters are on the Pro Bono Panel of the Northern District of New York. ("Panel")

(b) Application for Appointment of Counsel. Any application for appointment of counsel by a party appearing pro se shall include a verified statement detailing the party's previous efforts to obtain counsel by means other than by application to the Court

and indicating any prior representation of the party in cases brought in this court, including both pending and previously terminated cases or proceedings.

(c) Determination of Whether to Appoint Counsel. Upon receipt of an application for the appointment of counsel, the judge assigned to the case shall determine whether an attorney is to be appointed from the Panel to represent the pro se party. Factors which will be considered in making the determination are:

(1) the capability of the pro se party to proceed without counsel;

(2) the nature and complexity of the matter, both factual and legal, including the need for any necessary discovery;

(3) the inability of the pro se party to obtain counsel without court appointment;

(4) the degree to which the interests of justice will be served by appointment of counsel, including the benefit derived by the court from the assistance of appointed counsel; and

(5) any other factors deemed appropriate by the court.

(d) Order of Appointment. Whenever the judge concludes that the appointment of counsel is warranted, an order shall be entered directing the appointment of an attorney from the Panel. The clerk shall serve notice of the appointment upon counsel and all interested parties as directed by the court which shall state the name, address and telephone number of the appointee. When a pro bono appointment is made with regard to representing a debtor in the main case, the foregoing notice may be directed by the clerk to be given in the next general notice served upon all creditors.

cont'd., page 2 of Rule 214.2

(e) Grounds for Relief from Appointment. After appointment, an attorney may be relieved of representation only upon good cause shown.

(f) Application for Payment of Expenses. Counsel appointed pursuant to this Rule may make application for the reimbursement of out-of-pocket expenses not exceeding \$1,200.00 incurred in connection with the representation. The application should conform with the requirements set forth in Local Bankruptcy Rule 216.1(b). The Bankruptcy Judge shall review the request and, if approved, an

order shall issue directing the clerk of the district court to issue a check directly to the attorney to cover the reimbursement of expenses.

Comment

An application to be appointed to the Pro Bono Panel of the Northern District of New York to handle bankruptcy matters may be obtained from the Clerk of the Bankruptcy Court, Richard G. Zeh, Sr., James T. Foley U.S. Courthouse, 445 Broadway, P.O. Box 398, Albany, NY 12201-0398. To minimize potential conflict of interest problems, an attorney may specifically request to be appointed solely for debtor(s) or creditor(s) appearing pro se. An attorney may also specify a limit to the number of appointments that will be accepted per year.

All attorneys knowledgeable in bankruptcy law are urged to apply to be on the panel.

Rule 215.1. Monthly Statements of Operations

(a) Monthly Filing Requirement and Service. The operating reports mandated by Bankruptcy Code Sections 1106 and 704(8) must be filed monthly, and, in addition to being filed directly with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of the operations, shall be served upon any official committee or its attorney.

(b) Signature Requirement. The operating reports filed in accordance with subsection (a) of this rule must bear an original signature of the debtor or of the chapter 7 trustee verifying the

accuracy of the information contained therein.

(c) Failure to File Monthly Operating Reports. Failure to file the operating reports as required may be cause for the court to deny any affirmative relief sought by the debtor including, but not limited to, approval of a pending disclosure statement as provided by Local Bankruptcy Rule 316 and confirmation of a plan.

Comment

This rule addresses the requirement of filing monthly operating reports in chapter 11 cases and in a chapter 7 case when a business is authorized to be operated.

As to chapter 12 and chapter 13 cases, see Local Bankruptcy Rule 215.3.

Rule 215.2. Payments to Real Property Taxing Authorities in Chapter 12 and 13 Cases

If the debtor proposes to pay through the plan delinquent real property taxes, then for each parcel affected, debtor's counsel shall supply the chapter 12 or 13 trustee by the date scheduled for the 341 meeting of creditors, the:

1. Tax map section, block and lot numbers, or other identifying numbers of the real property at issue, the name(s) in whom the parcel is assessed and a copy of the tax map; and,

2. Name, title, and address of each real estate tax collector to whom the trustee is to pay taxes, together with the taxing entity of each (e.g., county name, school district name,

city, or village.)

Rule 215.3. Reporting Requirements for Chapter 12 and 13 Debtors Engaged in Business

In the event the debtor engages in the operation of a business enterprise, including a family farm pursuant to 11 U.S.C. 1201, as a result of which the debtor is required to collect taxes or for which the debtor incurs tax liabilities in the ordinary course of the operation of the debtor's business, the debtor shall:

(a) file with the trustee's office, a summary of business operations on such form as promulgated by the Trustee;

(b) maintain a bank account which serves solely as a separate tax account (the Tax Account) for the deposit of all tax funds (including, but not limited to, funds held in trust for employee's withholding taxes, sales taxes, employer business taxes, with the exception of income taxes) which may be collected by the debtor 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;

(c) within two business days from the date on which any salaries are paid to the debtor's employees, deposit that portion of such salaries as is required to be withheld for social security taxes and the employer's portion of social security taxes and disability and unemployment insurance taxes to the Tax Account;

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

(e) deposit any other taxes which the debtor is required to collect, or for which the debtor incurs liability in the ordinary course of the operation of the debtor's business (such as federal excise taxes) into the Tax Account no later than Wednesday of the week following the week in which such taxes were collected or in which the liability was incurred;

(f) during the pendency of the case, timely file all required federal tax returns and forward a copy of each such return to the Special Procedures function of the Internal Revenue Service at Internal Revenue Service, Leo W. O'Brien Federal Building, Clinton Avenue & North Pearl Street, Albany, NY 12207, Attention: Chief, Special Procedures function, Room B-1A (if the case is under the jurisdiction of the Buffalo Special Procedures function, the address is Internal Revenue Service, 111 Huron Street, Buffalo, NY 14202, Attention: Chief, Special Procedures function) within three days of filing the return; and

(g) during the pendency of the case, make required periodic deposits of federal taxes to a federal tax depository and shall provide the Special Procedures function with verification that such deposits were made within three days from the date of any such deposit.

Rule 216.1. Professional Compensation

(a) Applications for Compensation. Applications for compensation shall comply with all requirements outlined in FRBP 2016(a), shall state the amount requested, the time period during which the services were rendered, and specify the amounts, if any, within the total request that were previously received from any source, with or without court authorization. Additionally, 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 persons;

(3) a summary of the professional and paraprofessional services rendered including, in concise form:

- (A) a factual explanation of the nature and extent of services performed, the results obtained, and the size of the estate; and,
- (B) in addition, if an interim fee request, an explanation of the status of the case, a projection as to the percentage of work which the current application covers in relation to the overall case and any other matters which 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. Entries in the time records:

- (A) shall concisely detail each service rendered, the individual performing the service, the date the service was rendered and the time expended for each service in not more than .10 hour increments;
- (B) must be legible and, in the event the applicant uses codes, abbreviations or non-legal technical terms in the time records, such codes, abbreviations or technical terms shall be fully defined;
- (C) must 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 of the hourly rates(s) used in calculating the request for allowance of compensation and a summary of the total hours expended by each individual included in the application;

cont'd., page 2 of Rule 216.1

(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) to the extent the professional is employed pursuant to 11 U.S.C. §327 or §1103 and compensation is sought from the estate and not a third party, 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;

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

(9) an itemization of expenses incurred, conforming with subsection (b) of this rule.

(b) 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 20 cents 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;
- (D) facsimile transmission charges for out-going transmissions to long distance numbers, reimbursable at either
 - (i) the actual toll charge; or
 - (ii) \$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.

cont'd., page 3 of Rule 216.1

(3) The following expenses may be considered unreasonable unless separately justified through a detailed itemization and explanation by the applicant including but not limited to why they were necessary and 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 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 41 C.F.R. Part 101-7 under authority of 5 U.S.C. §5704;
- (D) meal expenses incurred while on long-distance travel.

Comment

The clerk's office shall publish the travel mileage rate changes referred to in Local Bankruptcy Rule 216.1 (b)(3)(C) as they occur, through the use of notices posted at its filing counters. The expenses specifically addressed in this rule are not intended to be either an exclusive or exhaustive list of potentially reimbursable expenses.

Compensation of auctioneers is addressed by Local Bankruptcy Rule 605.

Rule 216.2. Applications for Final Compensation

(a) Time for Filing. 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 within 90 days after entry of a final order confirming a plan or such fees and expenses shall be deemed to be waived.

(b) 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.

(c) 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 Local Bankruptcy Rule 216.1 governing professional compensation and FRBP 2016(a). The supplementary exhibit must account for the actual services, hours and expenses which were estimated in the previously submitted application.

Failure to file the supplementary exhibit 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.

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 compensating and monitoring services required after confirmation through the closing of the case.

Subdivision (a) 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, or forfeit any legal right to payment.

Rule 216.3. Amount, Notice and Timing of Payments to Debtor's Counsel in Chapter 13 Cases

(a) Supplemental Application for Compensation. The chapter 13 trustee may request, at any time, a supplemental statement pursuant to 11 U.S.C. §329(a) and FRBP 2016(a) to determine whether a hearing should be scheduled to consider whether payments to an attorney are excessive pursuant to FRBP 2017.

(b) Plan Payments to Debtor's Counsel. Unless otherwise

determined by the court, if all or part of the compensation to the debtor's counsel is to be paid through the chapter 13 plan, all such compensation must be paid in full from a maximum of the first 10 payments tendered to the trustee pursuant to the plan irrespective of confirmation or said remaining compensation will share thereafter with other creditors at a percentage fixed by the court.

(c) Notice to all Parties-in-interest. Notwithstanding any other provision of this rule, if the compensation for the debtor's attorney is an amount greater than one-third of the amount to be funded through the chapter 13 plan, the compensation is subject to approval upon a hearing held on notice to all parties in interest as provided in FRBP 2002(a)(7).

(d) Ex parte Application. An application that seeks allowance of fees and expenses totaling \$500 or less post-confirmation may be presented ex parte if it has the endorsed approval of the debtor and the chapter 13 trustee. If the application lacks the requisite approval, or if such post confirmation fee will cause the total of compensation to debtor's counsel to exceed the monetary limit of subsection (c) above, the fee must be approved after a hearing as provided in FRBP 2002(a)(7).

Rule 302.1. Proofs of Claim

(a) Asset Cases. In all chapter 11, 12 and 13 cases, and in a chapter 7 case noticed as an asset case, any entity filing a proof of claim shall properly identify the case to which such claim relates by stating the applicable case name and number assigned thereto. Proofs of claim including any required documentation should be filed in duplicate. If claimant desires a time stamped copy, a third proof of claim should be submitted along with a

stamped, self-addressed envelope. Wage claims shall contain the claimant's social security number.

(b) No Asset Cases. In a chapter 7 case noticed as a no asset case, no proof of claim shall be filed. Any proof of claim filed in a chapter 7 case designated as a no asset case may be returned by the clerk without filing.

Comment

Proper identification of the debtor estate by name and number is essential for the clerk to properly process a claim being asserted.

The filing of claim forms in duplicate facilitates the payment of dividends. The clerk retains the original proof of claim and the trustee, who oversees distribution, retains a copy.

Proofs of claim in chapter 7 cases will only be accepted in a case noticed as an asset case.

If at the time of filing it appears that there are no assets from which a distribution can be paid to creditors, the case shall be designated as "no asset". The notice to creditors will direct creditors not to file a proof of claim unless and until a subsequent notice is received. If it should later develop that the trustee uncovers assets from which a dividend might be paid, the designation of the case will be changed from no asset to an asset case. In that event, the clerk will notify all creditors of a deadline set for the filing of proofs of claim and creditors must then file claims on or before the deadline.

Rule 302.2. Creditors not Originally Scheduled Filing a Proof of Claim in Chapter 12 or Chapter 13 Cases

Any entity added to the schedule of creditors by amendment shall have ninety (90) days from the first date scheduled for the meeting of creditors or from the date shown on the certificate of service of the amendment, whichever is later, within which to file a proof of claim.

Comment

This rule is intended to clarify the incongruity created by FRBP 1009 allowing an amendment to creditor schedules at any time, with FRBP 3002 which does not provide for a specific method for the newly scheduled creditor to file a claim.

Rule 307.1. Objections to the Allowance of Claims

Unless otherwise ordered by the court or provided by the plan, objections to claims in chapter 11 cases must be filed no later than ten days after the entry of an order of confirmation.

Comment

This rule sets a date by which objections to claims must be

filed in order to expedite the resolution of administrative matters remaining after confirmation.

In many cases, a plan proponent should and will want to file objections to claims earlier and well in advance of confirmation in order to have the objections resolved prior to confirmation. The requisite votes for confirmation is acceptance of the plan by two-thirds in amount and one-half in number of the allowed claims voting in each class. 11 U.S.C. §1126. A proof of claim filed under Code Section 501 is deemed allowed unless a party in interest objects. 11 U.S.C. §502(a).

FRBP 3007 requires that a claimant receive a copy of the objection and notice of a hearing on the objection at least 30 days prior to the hearing.

Rule 307.2. Debtor's Objection to Claims in Chapter 12 and 13 Cases

(a) Time to File Objections. Absent a court order approving an extension of time, all debtor's objections to claims must be filed and served within 90 days of the trustee's service of the "Notice of Claims Filed" in the Albany court or the "Motion to Allow Claims" in the Utica court.

(b) Additional or Amended Claims. In the event that an amended claim is filed or a claim is filed pursuant to Local Bankruptcy Rule 320, any debtor's objections must be served within 90 days of the service of the Notice of Additional or Amended Claim by the trustee, absent court order approving an extension of time.

(c) Secured Claims. An entity holding an allowed secured claim that obtains relief from stay shall not continue to receive

the payments provided for in the confirmed plan. Payments on the previously filed secured portion of the claim will cease upon the entry of an order modifying the stay to permit repossession of the underlying collateral. Such payments will only resume upon consent of the parties or upon application and order of the court.

(d) The affected creditor referred to in (c) above shall retain the right to file an amended claim. The amended claim shall state:

(1) the date and terms of the disposal of the secured property;

(2) the name of the entity to whom the secured property was transferred;

(3) the consideration received therefor; and

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

Comment

Subsection (c) of this rule presumes that a creditor who has obtained relief from the stay will proceed to recover the collateral securing its loan thereby obviating the necessity of continued payments on the secured portion of the claim. Despite stay relief, however, the rule encourages the parties to continue to work out their differences by permitting payments to resume upon consent of the parties.

Rule 312. Valuation of Personal Property in Chapter 13 Cases.

(a) Debtor's Duty to make Property Available for Appraisal. Unless otherwise ordered by the court, within 10 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 absent specific contrary 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.

(b) Standard of Valuation for Motor Vehicle. Unless otherwise determined by the court, valuation of motor vehicles shall be the average of trade-in and retail values, including options and mileage, as contained in the Eastern Edition of the N.A.D.A. Official Used Car Guide for the month the debtor's

petition was filed. If the above N.A.D.A. Guide is not utilized by the debtor, the plan shall make specific reference as to the method of valuation.

(c) Presumptions as to Value when Non-appearance. Unless otherwise determined by the court, should the debtor appear but the creditor fail to appear at any valuation hearing set for the purpose of valuing the creditor's collateral, the debtor shall be entitled to the presumption that the value of the collateral is as set forth in the debtor's schedules. Should an objecting creditor appear at any such valuation hearing and the debtor fail to appear, the court may presume the value of the collateral to be the value as appraised by the creditor.

(d) Treatment of Certain Undersecured Claims. In the absence of a court order, a secured claim involving personalty that is undersecured by more than \$2000.00 shall be paid the value of the collateral through the plan by the chapter 13 trustee, with the remaining balance to be paid through the plan as a general unsecured debt. Nothing in this subsection shall be construed as preventing a debtor from proposing a plan to pay any secured claim through the plan whether oversecured or undersecured.

Rule 315.1. Notice of Filing of Plan and Confirmation Hearing in Chapter 12 or 13 Cases

(a) Service of Plan when Submitted Post-filing. If a debtor elects to file a plan after the filing of the petition pursuant to FRBP 3015, the attorney for the debtor, or, if pro se, the debtor, must serve the plan or a complete summary of the proposed plan together with a notice of the hearing of confirmation on each creditor, the trustee and the United States trustee and file an appropriate affidavit of service.

(b) Disclosure of Minimum Percentage Payment to Unsecured Creditors. The debtor's plan shall state the specific minimum percentage to be paid to unsecured creditors.

Rule 315.2. Objections to Confirmation in Chapter 12 and 13 Cases

(a) Service of Objection. Any creditor's objection to confirmation must be in writing and served on the debtor, debtor's attorney and the trustee no later than 3 days before the scheduled hearing on confirmation.

(b) Appearance Required upon Written Objection. If a written objection is served, all parties 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 is absent, the court may deny confirmation.

(c) Objections to Confirmation shall:

(1) specify the number and letter section(s) of Title 11 U.S.C. upon which the objection is grounded;

(2) allege the specific facts which support the

objections to confirmation; and

(3) summarize the creditor's claims against the debtor including the alleged classification (secured, unsecured, priority, administrative) and amount of the claim(s).

(d) Separate Pleading Required. Objection(s) to confirmation shall be treated as responsive pleadings only and may not be combined with any motion seeking any affirmative relief other than denial of confirmation.

(e) Confirmation Order. The confirmation order shall be prepared and submitted by the standing trustee. Upon written request, the trustee shall serve a copy of the proposed confirmation order upon any requesting party prior to or at the time of its submission to the court. Within 10 days of service of the order, debtor's counsel or any other entity served with the order, shall notify the trustee of any objections to the terms of the order.

Comment

This Rule is intended to address the procedure by which objections to confirmation in chapter 12 and 13 cases are framed for consideration by the court. Since objections to confirmation are frequently resolved by the insertion of special provisions in the order of confirmation, subparagraph (c) of this rule facilitates the process of "settling" the terms of the confirmation order prior to its entry by the court.

Rule 315.3. Modification of Chapter 12 or 13 Plan

(a) If a debtor in a chapter 12 or chapter 13 proceeding wishes to modify a proposed or confirmed plan, the debtor shall serve a notice of plan modification on the standing trustee assigned to such case, on the United States trustee, and on all detrimentally affected creditors deemed affected by a modification that proposes to either extend the time of payments or reduce the amount of payments.

(b) This Notice of Modification shall include, but is not limited to, the following disclosures:

- (1) a clear statement of modification or the amendment with specific reference to the provisions of the plan, currently before the court, that are being amended or modified;
- (2) any change in the dividend to be paid to unsecured

creditors indicating the specific numerical change in the dividend;

- (3) any change in the time for final payment under the plan;
- (4) any change in the plan payment;
- (5) any effect on the specific treatment of secured creditors under the plan; and
- (6) 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.

(c) For pre-confirmation modification, the notice shall not be later than twenty days prior to the date fixed for the hearing on confirmation of the plan, or any adjournment thereof. The notice shall advise affected parties of any adjourned confirmation hearing date.

(d) For post-confirmation modification, the notice shall indicate that the proponent shall submit an order unless objection to the modification together with a notice of hearing is received within twenty days after service of the modification.

(e) In addition to the requirement of subparagraph (a) supra, an original modified plan shall be filed with the bankruptcy clerk's office. A copy shall be served on the standing trustee and United States trustee.

Comment

This rule is intended to supplement Sections 1223, 1323, 1229, and 1329 of the Code and FRBP 2002(a)(6) and 3015.

Rule 316. Proposed Disclosure Statement and Plan: Disclaimer, Jurisdictional Statement

(a) Disclaimer. Any proposed disclosure statement submitted for court approval shall have on its face 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. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

(b) Jurisdiction. The jurisdictional statement in the plan shall reflect the fact that the court will retain jurisdiction until there is substantial consummation of the plan. Assuming the other conditions of 11 U.S.C. §1101(2) are satisfied, the court may find a plan to be substantially consummated at the time the first

payment is made pursuant to the plan.

(c) Approval of Disclosure Statement. 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 FRBP 2015(a)(3) and Local Bankruptcy Rule 215.1.

Comment

As provided by FRBP 3017(a) the hearing on approval of the disclosure statement is on not less than 25 days notice to all parties in interest. All parties receive notice of the hearing, but a copy of the plan and proposed disclosure statement is mailed only to the debtor, any trustee or committee, the SEC and any party in interest who in writing requests a copy. FRBP 3017(a).

Rule 318.1. Certification of Ballots

All chapter 11 ballots transmitted to creditors for the purpose of voting to accept or reject the proposed plan of reorganization shall be filed with the proponent of the plan. Ballots received shall be made available for review, upon request, by any party in interest.

At least three business days prior to the hearing on confirmation, the proponent of a plan shall certify to the court the amount and number of allowed claims or interests of each class accepting or rejecting the plan in accordance with 11 U.S.C. §1126. The ballots received by the proponent of the plan must be submitted to the court as an exhibit to the certification. A copy of the certification shall be served on the debtor, trustee, if any, United States trustee, and any court approved committee. On the basis of the certification, the court may find that the plan is subject to confirmation. If an issue is raised as to the

proponent's compliance with 11 U.S.C. §1126, the court may hold an evidentiary hearing prior to any confirmation hearing.

Failure to timely file the required certification and ballots is cause for the court to postpone the hearing on confirmation.

Comment

This rule imposes a certification requirement that permits the court to rely on such certification in determining whether a plan has been accepted or rejected pursuant to §1126 of the Code.

Rule 318.2. Modification of Chapter 11 Plan Before Acceptance

In the event that the proponent of a chapter 11 plan files a modification of the plan after transmittal of the approved disclosure statement and before acceptance of the plan, the proponent shall serve a copy of the plan, as modified, on the debtor, trustee, if any, the United States trustee and any creditors' or equity security holders' committee appointed pursuant to the Code no later than eleven days prior to the date fixed for the hearing on confirmation. On notice to such entities, the court shall determine whether the modification adversely affects the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted the modification in writing. If the modification is not adverse, the plan, as modified, shall be deemed accepted by all creditors and equity security holders who accept the plan. If the modification is adverse, the requirements of FRBP 3017 shall apply to the modified plan and any amendment of the disclosure statement made necessary by the modification.

Comment

Pursuant to §1127(a) of the Code, the proponent of a chapter 11 plan may modify such plan at any time before confirmation. While FRBP 3019 governs modification of a plan after acceptance and before confirmation, this rule governs modification subsequent to the transmission of an approved disclosure statement and before acceptance.

Rule 320. Objection to Confirmation of a Plan; Withdrawal of Objection; Motions to Confirm by "Cram-Down"

(a) Objection to Confirmation. An objection to the confirmation of a chapter 11 plan shall be served and filed not later than seven days prior to the first date set for the hearing to consider confirmation of a plan, or by such other date as the court may fix.

(b) Withdrawal of Objection. In the event an objection to confirmation of a plan is withdrawn or abandoned, the plan shall not be confirmed unless the plan's proponent together with counsel state on the record or by affidavit the consideration promised or given, directly or indirectly, for the withdrawal or failure to prosecute the objection.

(c) Motions to Confirm by "Cram-Down". If the proponent of the plan intends to seek confirmation of the plan as to one or more classes pursuant to 11 U.S.C. §1129(b), the proponent shall file and serve upon the member or members of such class or classes, not less than seven days prior to the hearing to consider confirmation, notice of its intent to seek confirmation of the plan as to such class or classes pursuant to 11 U.S.C. §1129(b). Such notice shall

be accompanied by an application 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 11 U.S.C. §1129(b).

Comment

Subdivision (a) of this rule designates a fixed time for filing of service of an objection to confirmation as permitted by FRBP 3020 (b)(1). Subdivision (c) sets forth the required procedure for requesting the court to "cram-down" a given class which has not accepted the plan.

Rule 322. Post-Confirmation Procedure and Closing of Chapter 11 Case

(a) Disbursing Agent. At the time of confirmation of the chapter 11 plan, the court may designate an individual to serve as disbursing agent for the purpose of making the first payment pursuant to the plan. The designated disbursing agent shall be named in the order of confirmation.

(b) Report of Substantial Consummation. The proponent of the plan shall file a report of substantial consummation which provides a basis for the court to find that the proponent of the plan has satisfied the criteria of Bankruptcy Code §1101(2).

The report of substantial consummation shall be accompanied by an application for final decree, the final report form, a proposed final decree, the cancelled checks representing the distributions made pursuant to the confirmed plan and the supplementary exhibit to the application for final compensation required by Local Bankruptcy Rule 216.2(c). Based on the information received, the court shall ascertain whether the case has been fully administered and entertain the entry of the proposed final decree closing the case. Pursuant to FRBP 3022, factors the court may consider in

determining whether the estate has been fully administered include: (1) whether the order confirming the plan has become final; (2) whether deposits required by the plan have been distributed; (3) whether the property proposed by the plan to be transferred has been transferred; (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan; (5) whether payments under the plan have commenced; and, (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

(c) Time for Filing. 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 payment made under the plan. In no event shall the report be filed later than 180 days after entry of a final order confirming a plan unless the court, for cause shown, extends the time upon motion filed and served within the original 180 day period by a party in interest.

Comment

The court may name the debtor, debtor's attorney, or some other individual to serve as disbursing agent with respect to making the first payment under the plan. The disbursing agent serves without compensation.

cont'd., page 2 of Rule 322

Section 350(a) of the Code and FRBP 3022 provide that the court shall enter a final decree closing a case when it is fully administered, on the court's own motion or on motion of a party in interest. Those authorities, however, provide no deadline for such motions. It has been the experience of the court that there has often been an inordinate and unnecessary delay in filing such motions. This Rule is intended to remedy that problem.

The court may administratively close the case after the first payment is made under the plan and the required report and accompanying documents are filed by the plan proponent. Under this rule, the plan proponent must file the report not later than 180 days after confirmation or as otherwise directed by the court.

The final report shall include, but is not limited to, the following information:

1. Administrative expenses:

Trustee compensation (if applicable) \$ _____

Attorney for trustee compensation (if applicable)	\$ _____
Attorney for debtor compensation	\$ _____
Other professionals compensation	\$ _____
All expenses	\$ _____

Total administrative expenses
\$ _____

2. Percentage of claims paid:

Percentage of claims paid to general
unsecured creditors \$ _____

Once jurisdiction has been divested by the bankruptcy court, in the event of a subsequent default by the debtor under the terms of its confirmed plan, aggrieved creditors have the remedy of suit on the plan and order of confirmation. The debtor's confirmed plan creates obligations of the debtor to creditors which have been substituted for the debtor's pre-petition obligations. These obligations are valid and enforceable in state and federal courts which otherwise have jurisdiction over the parties and their claims.

Rule 401.1. Motion to Obtain Credit

If authority for obtaining credit or incurring debt is sought pursuant to §364(c) or (d) of the Code, the notice of motion shall expressly state whether priority over any or all administrative expenses specified in §503(b)(2) or §507(b) of the Code is sought, and the names of those creditors specifically affected thereby.

Rule 401.2. Obtaining Credit in Chapter 12 and 13 Cases

(a) The debtor shall make written application to the trustee for approval to incur any non-emergency consumer debt that does not involve a material modification of the debtor's budget. The debtor shall not file the application with the clerk. If approved by the trustee, the trustee shall file the approval and the application with the clerk. If not approved by the trustee, the debtor may then file with the clerk a motion to incur non-emergency consumer debt and the motion shall contain as an attachment the trustee's denial.

(b) If a motion is required, the motion shall be on notice to the standing trustee, the United States trustee and all creditors.

Comment

This rule facilitates the process whereby a chapter 12 or 13 debtor may incur ordinary credit of a non-emergency nature which does not materially affect the debtor's budget. This could involve, for example, a debtor incurring credit to finance an automobile during the life of a plan.

Rule 401.3. Emergency Refunds in Chapter 12 and Chapter 13 Cases

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

- (1) that the request for such refund is in writing;
- (2) that the request is signed by the debtor (both debtors in a joint case) or by the debtor's counsel;
- (3) that exigent circumstances support such emergency refund; and
- (4) that the issuance of the refund will not substantially affect distributions to creditors.

(b) Form of Refund. The refund may come in the form of either a check from the trustee, or the debtor may be allowed to forgo the next monthly payment in exchange for the refund, in the discretion of the trustee.

Rule 510. Motion to Reopen

A motion to reopen a case pursuant to FRBP 5010 shall be in writing and shall be accompanied by the appropriate filing fee. The motion, if brought by the debtor, may be ex parte unless otherwise ordered by the court. If the motion is brought by anyone other than the debtor, it shall be on notice to the former trustee or the former standing trustee, the U. S. trustee, and the debtor. If the case has been transmitted to the Federal Records Center for storage, a separate retrieval fee must accompany the motion. The filing fee but not a retrieval fee may be waived by the court if a case is reopened to correct an administrative error or on account of actions relating to discharge.

Comment

This motion must be served upon the United States trustee in accordance with Local Bankruptcy Rule 934.

Rule 604.1. Appraisals - Access and Confidentiality

(a) Filed With the Court Prior to Sale. Unless otherwise ordered by the court, when an appraiser has been appointed by the court, the appraisal of the property shall be filed no later than two days prior to any scheduled sale of the property. Property subject to an appraisal shall not be sold until after the appraisal has been filed with the clerk and United States trustee.

(b) Access and Confidentiality. The appraisal shall be submitted in a sealed envelope marked "confidential- appraisal". The clerk, the United States trustee and the appraiser shall maintain the confidentiality of the appraisal, unless otherwise directed by the court.

Rule 604.2. Notice of Sale of Assets of the Estate Outside the Ordinary Course of Business

In a chapter 11 case, if the debtor or trustee seeks authority to sell property of the estate pursuant to §363(b) of the Code prior to the entry of an order of confirmation, the notice of motion shall contain a clear and conspicuous statement to that effect. In addition to the information required under FRBP 2002(c), the notice of the hearing shall specify the extent to which, if any, the proceeds of sale shall be used to benefit each class of creditors, the extent of the debtor's liabilities, and the estimated net value of any of the remaining assets not subject to the proposed sale. The notice shall further articulate 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.

Comment

This rule requires special notice of a proposed sale outside the ordinary course of business. Since the proposed sale is outside the normal procedural route for proposal, adoption and confirmation of a proposed plan, it requires special scrutiny by the court. See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983.)

Rule 604.3. Sale or Disposal of Both Real and Personal Property in Chapter 12 or 13 Cases

(a) Motions for Sale of Real Property. The debtor shall file a motion for approval of the sale of real property after a contract of sale is procured. Said motion shall be on notice to all parties in interest and shall state the following:

- (1) whether or not the debtor's plan has been confirmed;
- (2) the address of the property;
- (3) whether or not the property is the debtor's residence;
- (4) the sale price;
- (5) if the property has been appraised, and if so when and by whom;
- (6) the name of each mortgage or lienor and the approximate payoff for each lien;
- (7) the approximate amount of unpaid real taxes;
- (8) the name of any realtors and the proposed real estate commission;
- (9) 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;
- (10) a summary of the total deductions from the sale proceeds and the approximate amount of the sale proceeds to be paid into the plan; and
- (11) whether or not the plan provided for the sale.

(b) To sell or otherwise dispose of personal property with a value of \$2500 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 with the clerk. 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 with the clerk. If not approved by the trustee, the debtor may file with the clerk a motion to dispose of or sell property of the estate, other than real property, and the motion shall contain as

an attachment a copy of the trustee's denial. Said motion, if necessary, shall be on notice to all parties in interest.

(c) All professionals attendant to the sale of real property must have their fees approved by the court prior to payment.

Rule 605. Auctions and Auctioneers

(a) Compensation. Unless otherwise ordered by the court for cause shown, compensation and reimbursement of expenses shall be allowed to an auctioneer for sale of property as hereinafter specified.

(1) The maximum allowable commissions on the gross proceeds of each sale are as follows:

- (a) 10% of any gross proceeds of sale on the first \$25,000 or less;
- (b) 8% of any amount in excess of \$25,000 but not in excess of \$50,000;
- (c) 6% of any amount in excess of \$50,000 but not in excess of \$75,000;
- (d) 4% of any amount in excess of \$75,000 but not in excess of \$100,000;
- (e) 2% of any amount in excess of \$100,000.

(2) The auctioneer shall be reimbursed for reasonable and necessary expenses directly related to the sale, including bond premium cost attributable to said sale, labor, printing, advertising and insurance, but excluding workmen's compensation, social security, unemployment insurance or other payroll taxes. If directed by the trustee to transport goods, the associated costs shall be reimbursable.

(b) Purchase Prohibited. 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.

(c) 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, to be approved by and 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 lieu of a bond in each case, an auctioneer may be permitted to file a blanket bond covering all cases in which the

auctioneer may act. Such blanket bond shall be at the expense of the auctioneer, shall be in favor of the United States of America, and shall be in an amount sufficient to cover the aggregate value as appraised of all property to be sold.

cont'd., page 2 of Rule 605

(d) Report of Sale. The auctioneer shall file a report with the clerk and the United States trustee within 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 items for which there was no bid and the disposition of any such items; (8) the terms and conditions of sale which were 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.

(e) Proceeds of the Amount of Sale. Unless otherwise ordered by the court, 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 11 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.

(f) Application for Commissions and Expenses. An auctioneer shall apply to the court for approval of commissions and expenses on not less than 20 days notice as required by FRBP 2002 and Local Bankruptcy Rule 202.1. No such application shall be granted unless the report referred to in subdivision (d) of this rule has been filed.

Rule 607. Books and Records; Storage

(a) The trustee may place in storage, at the expense of the estate, the debtor's books, records and papers. Upon the issuance of the final decree, the trustee may, nevertheless, return the debtor's books, records, and papers to the debtor.

(b) The trustee may dispose of all the debtor's records in the trustee's possession, including debtor's books, records, and papers, three years after approval of the final report, providing that debtor's books, records, and papers have been first offered to the debtor.

(c) The trustee may retain those documents and materials which, in the trustee's judgment, may be useful in supporting performance of the trustee's duties.

Comment

Disposal of the debtor's books, records and papers is governed by §363 or §554 of the Code.

Rule 707. Notice of Claim of Unconstitutionality

If at any time prior to the trial of any adversary proceeding, contested matter, or action to which neither the United States nor any agency, officer or employee thereof (other than the United States trustee) is a party, a party draws in question the constitutionality of an Act of Congress or any statute of any state affecting the public interest, that party shall notify the court in a separate accompanying pleading of the existence of such question, giving the title of the case, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

Comment

This rule is intended to facilitate compliance with 28 U.S.C. §2403.

Rule 716. Pre-Trial Conferences in Adversary Proceedings

(a) Pre-Trial Conference. Pursuant to FRBP 7016, the attorneys for the parties in an adversary proceeding and any unrepresented parties may be directed to appear at a pre-trial conference at the time and place set forth in the summons and notice of pre-trial and to report on the following matters:

(1) the status of the pleadings and joinder of other parties or actions;

(2) the discovery proceedings and motions anticipated and the time required for completion thereof;

(3) the formulation and narrowing of the issues including elimination of frivolous claims or defenses;

(4) unusual problems of law or fact;

(5) stipulations as to all practicable matters so as to avoid unnecessary proof;

(6) the possibility of settlement;

(7) the amount of time necessary to prepare the case for trial and the amount of time necessary to try the case;

(8) such other matters as may aid in the disposition of the case.

Upon the completion of the conference, the court may enter an order setting the time within which all pre-trial motions must be filed and discovery completed. Thereafter, further discovery shall not be permitted except by leave of the court for good cause shown.

(b) Pre-Trial Order and Joint Pre-Trial Stipulation. Insofar as Federal Rule of Civil Procedure 16(b), made applicable to bankruptcy by FRBP 7016, mandates a scheduling order, it shall not be applicable to adversary proceedings. If the court issues a pre-trial order, it may also require the parties to prepare a joint pre-trial stipulation containing the following:

(1) Basis for jurisdiction.

(2) Statement of uncontested facts.

(3) Statement of facts which are in dispute.

(4) Statement of damages claimed or relief sought.

A party seeking relief other than damages shall list the exact form of relief sought with precise designations of the relief to be included in any order providing relief.

cont'd., page 2 of Rule 716

(5) Witnesses listed in the order they will be called along with a brief statement of the evidence the witness will give, (excluding rebuttal witnesses).

(6) A list of exhibits to be marked in accordance with Local Bankruptcy Rule 917, together with a stipulation as to the admissibility of each exhibit; or if not stipulated into evidence, a brief statement as to the basis for objection.

(7) A list of each discovery item and trial deposition to be offered into evidence.

(8) Estimated time for trial.

(9) A certification that the parties have attempted good faith settlement discussions without success.

(10) Additionally the parties shall serve and file a memorandum setting forth the points and authorities relied upon, divided under as many appropriate headings as there are points to be determined.

(11) Unless otherwise ordered by the court, pre-trial stipulations shall be filed with the court on or before the 15th day prior to the date set for trial.

Rule 726.1. General Provisions Governing Discovery

(a) Required Disclosure. The affirmative disclosure required

to be made by a party under Federal Rule of Civil Procedure 26(a)(1), (2) and (3) as incorporated by FRBP 7026, without awaiting a discovery request, shall not be operative unless specifically ordered in a given proceeding.

(b) Meeting of Parties. Unless otherwise ordered by the court, the provisions of Federal Rule of Civil Procedure 26(d) and (f), as incorporated by FRBP 7026, insofar as they mandate an actual meeting of the parties fourteen 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 contested matters or adversary proceedings.

Comment

This "opt-out" provision permits the court to implement provisions of Federal Rule of Civil Procedure 26, as made applicable to bankruptcy by FRBP 7026, on a case by case basis as deemed appropriate. As a general rule, however, the times specified within the rule do not easily conform to the time frame within which contested matters governed by FRBP 9014 are heard nor to how adversary proceedings which may be set for pre-trial within a few days of the expiration of the time to answer the complaint are handled.

This rule should be read in conjunction with Local Bankruptcy Rule 716.

Rule 726.2. Discovery Motions

(a) Affidavit. No discovery motion shall be heard by the court unless counsel for the movant files with the court an affidavit at or prior to the hearing on the motion 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. If part of the issues have been resolved by agreement, the affidavit shall identify the issues so resolved and the issues remaining unresolved.

(b) Decision without Hearing. A routine motion to compel answers to interrogatories and to compel compliance with a request for production under FRCP 34, wherein it has been averred that no response or objection has been timely served, may be summarily granted or denied by the court without awaiting response.

Rule 733. Interrogatories to Parties

The automatic limitation to 25 in number of written interrogatories which may be served upon a party contained in Federal Rule of Civil Procedure 33(a) as incorporated by FRBP 7033 shall not apply in bankruptcy proceedings.

Comment

Revision of Fed.R.Civ.P. 33 to limit the number of interrogatories to "25 in number including all discrete subparts" corresponded to the simultaneous revision of Fed.R.Civ.P. 26(a)(1)-(3) requiring affirmative disclosure of much of the information previously obtained by interrogatory. Since by Local Bankruptcy Rule 726.1, the court has exercised its right to opt-out of the affirmative disclosure requirement of Fed.R.Civ.P. 26, made applicable in bankruptcy by FRBP 7026, the court has correspondingly suspended the automatic limitation on the number of interrogatories that can be propounded. Nothing in this rule, however, limits a party's right to seek a protective order under Fed.R.Civ.P. 26(c) as incorporated by FRBP 7026, deemed necessary to protect a party from annoyance, oppression, or undue burden or expense.

Rule 741. Discontinuance and Settlement of Actions

No adversary proceeding to determine the dischargeability of a debt or objection to discharge shall be settled, discontinued or withdrawn except upon court approval and in the case of an objection to discharge after notice to the trustee, the United States trustee, and such other persons as the court may direct in accordance with FRBP 7041.

Court approval is conditioned upon full disclosure as to the circumstances of any settlement, including the terms of any agreement entered into between the creditor and the debtor. If the action is not settled or withdrawn in the presence of the court at a pre-trial conference or other hearing, then plaintiff shall file a proposed order of discontinuance accompanied by an affidavit or stipulation fully disclosing the circumstances of any settlement and any consideration promised or given, directly or indirectly, for the withdrawal of the action. The court may alternatively direct the defendant to prepare and file the affidavit required by this rule.

Comment

See 18 U.S.C. §152 and FRBP 7041.

Rule 755. Failure to Prosecute or Defend; Adjournments

(a) Failure to Prosecute or Defend. Failure of a party to appear before the court at a hearing or pre-trial conference, to complete necessary discovery, to be prepared to proceed to trial or evidentiary hearing at the time fixed by the court, to prosecute or defend diligently, or to comply with Local Bankruptcy Rule 904.2 may be considered abandonment of the adversary proceeding or contested matter or the defense thereof, and an appropriate order may be entered against the nonprosecuting or defaulting party either with respect to a specific issue, or on the entire adversary

proceeding or contested matter.

(b) Adjournments. Requests for adjournments of dates fixed for trials and evidentiary hearings shall be made in writing, unless consented to by all parties, to the judge to whom the case has been assigned on notice to all parties in interest as provided in Local Bankruptcy Rule 913.1 (f).

Adjournments shall be granted only for good cause and in the case of the trial of adversary proceedings, no more than three adjournments shall be granted, except upon a showing to the court of exceptional circumstances.

Comment

Pursuant to FRBP 7054 and with respect to adversary proceedings, the court may assess reasonable costs directly against the party or counsel whose action has obstructed the effective administration of the court's business.

Rule 767. Registry Accounts

(a) Orders for deposit of funds into the registry. When the clerk is to hold any money pursuant to a directive by the court in connection with any pending case or proceeding, the order directing the establishment of the registry account shall specify:

(1) the amount of the funds to be deposited;

(2) the name and location of the depository institution to receive the funds;

(3) the type of account in which the monies are to be deposited and the current interest payable on the account;

(4) the term of the deposit tailored to individual circumstances and maximized to avoid repeated renewals; and

(5) that deposits and withdrawals from the account can only be made upon further order of the court except for the imposition and collection of the registry fee.

(b) Deposits in excess of \$100,000. If the amount of the deposit is in excess of \$100,000, the clerk's office must have 30 days advance notice prior to the receipt of the monies in order to arrange proper collateralization.

(c) Registry fee. The clerk shall deduct from any interest paid on registry funds a registry fee as authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee shall be collected periodically as interest accrues and shall be immediately deposited upon collection in the United States Treasury.

(d) Orders for withdrawal of registry funds. At the time of intended disbursement of registry monies, an order is to be submitted to the court which shall contain the following information:

(1) the name and address of the person(s) to receive the monies;

(2) the amount of principal and interest each is to receive;

(3) the social security number or taxpayer ID number for each recipient of funds.

cont'd., page 2 of Rule 767

Comment

This rule helps to implement FRBP 7067 pertaining to the deposit of money into court. Since the Federal Deposit Insurance Corporation only insures deposits up to \$100,000, if the deposit exceeds that sum the depository designated must have sufficient collateral to pledge as outlined in 31 C.F.R. Part 202. (Treasury Circular 176).

The fee charged against interest earned on the registry funds

has been 10% since December 1, 1990. It is subject to change and is published periodically by the Director of the Administrative Office in the Federal Register.

Social security and/or taxpayer ID numbers of the payees are required in the order of disbursement for the depository institution's tax reporting records.

Rule 805. Supersedeas Bond

(a) Amount 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 \$250.00 to cover costs.

(b) Amount Fixed by the Court. When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court, on notice, shall fix the amount of the bond. In all other cases, it may, on notice, 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 816. Order, Judgment or Remand by Appellate Court

(a) Order or Judgment of Appellate Court. An order or judgment of an appellate court, when filed in the office of the clerk, shall automatically become the order or judgment of the court and be entered as such by the clerk without further order.

(b) Remand by Appellate Court. If the order or judgment of the appellate court remands a proceeding for further action, a motion for such further proceedings must be filed by the successful party on appeal within ten days of entry of such order.

Rule 901. Definitions

In these Local Rules of Bankruptcy Practice-

(1) "administrative order" means any order signed by the bankruptcy judges amending, modifying or supplementing procedures of the United States Bankruptcy Court for the Northern District of New York;

(2) "Bankruptcy Code" or "Code" refers to the Bankruptcy Reform Act of 1978, as amended and set forth in Title 11 of the United States Code;

(3) "FRBP" 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 Rules of Bankruptcy Practice and as thereafter amended or enacted;

(4) "Chief Judge" means that individual designated to serve by the district court pursuant to 28 U.S.C. §154(b);

(5) "clerk" means clerk or deputy clerk of the court or, with respect to a case which has not been referred pursuant to 28 U.S.C.

§157(a), means clerk or deputy clerk of the district court;

(6) "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;

(7) "district clerk" means clerk or deputy clerk of the district court;

(8) "district court" means the United States District Court for the Northern District of New York;

(9) "district judge" means any United States District Judge appointed to or sitting by designation in the district court;

(10) "District Rules" means the Local Rules of the United States District Court for the Northern District of New York, as amended;

(11) "judge" means any bankruptcy judge appointed to or sitting by designation in the court or, with respect to a case which has not been referred, it means district judge; and

(12) "United States trustee" means the United States trustee, acting United States trustee, assistant United States trustee or attorney therefor for the Northern District of New York, Region 2.

cont'd., page 2 of Rule 901

The meanings of other words and phrases used in these Local Bankruptcy 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 904.1. Form of Papers for Filing

(a) General Form. In conformity with the rules of the district court and as required by the Judicial Conference, all papers presented for filing shall be on standard size 8 1/2" x 11" white, opaque paper, plainly typed or written on one side and properly paginated at the bottom of each page, with not less than one and one-half spaces between lines except for quoted material.

(b) Caption. Papers shall bear the name of the court, the title of the case, case number and chapter number assigned thereto, and, if pertinent to an adversary proceeding, the adversary proceeding name and assigned number. The papers shall additionally identify the document by a short title.

(c) Backers. The original copy of all proposed orders must have a backer.

Comment

Signing and verification of papers is governed by FRBP 1008 and 9011. It requires that all papers filed on behalf of a party

must be signed by an individual attorney and state an office address and telephone number. A party not represented by an attorney shall sign all papers and state the party's address and telephone number.

Rule 904.2. Filing Generally

(a) Where to File. All papers in a pending case shall be filed in the office of the clerk where the assigned judge sits. After regular business hours on weekdays, on Saturdays, Sundays, and legal holidays, the clerk or court, when good cause is shown, may make arrangements to permit the filing of pleadings or other papers at locations other than the official courthouses within the district.

(b) Electronic Filing. No papers shall be filed with the clerk by electronic means. In the event a party deems it necessary to submit any document to the court by electronic means (e.g. FAX phone), permission must first be obtained from the court. Any document submitted to the court by electronic means (e.g. FAX phone) will not, however, be deemed filed. In all cases where documents which are required to be filed with the court are transmitted to the court by electronic means (e.g. FAX phone), the original must follow by mail and it is the original and not the FAX copy which will be filed and docketed on the date it is received by mail in the clerk's office.

(c) Orders and Judgments. Unless otherwise ordered by the court, any oral order of the court shall be reduced to writing and submitted by the prevailing party no later than 11 days from the date of ruling.

(d) Conformed Copies. All proposed orders or judgments for

entry shall be filed in duplicate except when such additional copies are required by subsection (e) of this Rule. If the filing party desires a conformed copy, the papers should be accompanied by a postage paid self-addressed envelope.

(e) Notice of Entry. Whenever notice of entry of a contested order or judgment is required by FRBP 9022, the party submitting said order or judgment shall furnish the clerk with a sufficient number of additional copies of such order or judgment, a list of the names and addresses of the parties contesting the entry thereof, and the names and addresses of their respective attorneys.

(f) Adversary Proceeding. A complaint filed to commence an adversary proceeding shall be accompanied by an Adversary Proceeding Cover Sheet (Form B 104, Administrative Office of the U.S. Courts).

(g) Noncompliance. Failure to comply with subsections (c), (d), or (e) of this rule is cause for the court to vacate its oral order and deny the relief requested.

Rule 910.1. Prohibition of Debtor Corporation Proceeding Pro Se

(a) A debtor corporation shall not be permitted to file a petition or proceed under chapters 7, 9, 11 or 12 without representation by an attorney duly admitted to the Northern District of New York.

(b) In the event that counsel for a debtor corporation is permitted to withdraw, the case is subject to automatic dismissal unless new counsel is substituted.

Comment

This rule should be read in conjunction with Local Bankruptcy Rule 910.3.

Rule 910.2. Attorney Practice Before the Court

(a) Admission to District Court. Any attorney who is admitted to practice before the district court of the Northern District of New York is also admitted to practice before this court.

(b) Pro Hac Vice. 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 only for a limited purpose in a particular case, adversary proceeding, contested matter or action. An attorney seeking admission pro hac vice shall provide a certificate of good standing in support of counsel's motion for admission, as evidence of admission to the bar of the highest court of any state or of any United States district court.

(c) Designation for Service. A judge 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 910.3. Required Representation, Withdrawal or Substitution
of Attorneys of Record**

(a) Required Representation. An attorney for debtor is required to represent the debtor in all matters related to the bankruptcy case including, but not limited to, the defense of adversary proceedings commenced pursuant to 11 U.S.C. §§523 and 727 unless other counsel is substituted at the request of the debtor or the attorney is permitted to withdraw by order of the court.

(b) Withdrawal. 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 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 standing trustee, any 1104 trustee, any appointed committee and any party having filed a notice of appearance.

(c) Substitution. An 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.

(d) Other Attorneys of Record. Withdrawal or substitution of other attorneys of record may be accomplished by providing written notice to the court and to all creditors and interested parties. Withdrawing counsel shall furnish and file a certificate of service with the court in accordance with this rule.

Rule 913.1. Motion Practice

(a) Time and Manner. Unless otherwise ordered by the court, notice of any motion to be heard by the court shall be provided in the time and manner prescribed by the Federal Rules of Bankruptcy Procedure and these Local Bankruptcy Rules.

(b) Service. Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly FRBP 2002, 3007 and 4007), these Local Bankruptcy Rules or as ordered by the court, all motions shall be served at least 15 days before the return date of the hearing. The moving party shall file the original motion papers, and a certificate of service with the clerk's office no later than three business days prior to the return date of the motion. Failure to file the original moving papers and/or certificate of service may result in the motion not appearing on the court's calendar.

(c) Answering Papers.

(1) Unless otherwise ordered by the court for cause shown, answering papers in opposition shall be filed and served for every written motion other than one which may be considered ex parte or on shortened notice as ordered by the court; answering papers and opposing memoranda of law shall be served and filed so as to be received no later than three business days before the return date of the hearing.

(2) In the event the court hears oral opposition without papers and adjourns the hearing, answering papers substantiating the oral opposition shall be filed and served within three business days of the original hearing date.

(d) Reduction of Time. A request for an order reducing any specified notice period shall be made by application to the

appropriate judge for an expedited hearing on the motion pursuant to FRBP 9006(c). Such application shall contain a clear and specific showing by affidavit of good and sufficient reasons for reduction of the notice period.

(e) Rule or Statutory Basis. A request for an order, whether brought on by motion or application, shall specify the rule or statute upon which the motion or application is predicated, and the authority for the entry of the proposed order. Failure to provide the basis for relief sought is cause for the court to deny the relief requested.

(f) Adjournment. Unless otherwise ordered by the court, any party who intends to seek an adjournment of a motion or any proceeding thereon shall make the request to the court, after attempting to obtain consent of opposing counsel, stating both the reasons adjournment is requested and whether any previous requests for adjournment have been made.

The party obtaining the adjournment shall confirm such adjournment in writing to the court with copies to all parties in interest. Adjournments will not be automatically granted on stipulation of counsel but may be granted by the court on a showing of good cause.

(g) Withdrawal. Any movant who does not intend to pursue a motion shall notify the court and opposing counsel at the earliest possible date.

cont'd., page 2 of Rule 913.1

(h) Consent to Relief. Any movant who has obtained consent to the relief requested of all necessary parties shall notify the court at the earliest possible date. Where the parties have agreed to a stipulation, a separate proposed order must be submitted for approval by the court.

(i) Summary Judgment Motions. On a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, there shall be annexed to the notice of motion a separate short and concise statement of the material facts as to which the moving party contends there is no genuine issue, with specific citations to the record. The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue, with specific citations to the record where the factual issues arise. All material facts set forth in the statement served by the moving party shall be deemed admitted unless controverted by the statement served by the opposing party. The motion for summary judgment may be denied if the moving party fails to file and serve the statement required by this paragraph.

(j) Where a motion is made for the relief set forth in subdivision (a)(1), (2), (3), (5) or (8) of Local Bankruptcy Rule 202.1 and the object of the motion and its purposes are clearly and unambiguously stated in the notice of motion, accompanying affidavits, applications or exhibits need not be served on all parties or creditors as long as the notice of motion provides that any party is entitled to receive said applications, exhibits or

affidavits without charge from the movant upon request. Complete copies of all motions and accompanying applications, affidavits or exhibits shall be served upon the court, the U.S. trustee's office, any official committees, opposing counsel, and any party which may directly be adversely affected by the granting of the requested relief.

(k) Motions to Lift Stay and/or Abandonment. All motions to lift, vacate or modify the automatic stay pursuant to 11 U.S.C. §362(d) and/or motions for abandonment of property pursuant to 11 U.S.C. §554(b) shall clearly and conspicuously contain the following paragraph (which may be single spaced):

PURSUANT TO BANKRUPTCY RULE 9014 AND LOCAL BANKRUPTCY RULE 913.1(c), IF YOU INTEND TO OPPOSE THE MOTION, YOU MUST SERVE ON THE MOVANT'S COUNSEL AND FILE WITH THE CLERK OF THE BANKRUPTCY COURT, WRITTEN OPPOSITION TO THE MOTION NOT LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THIS MOTION. IN THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD BEFORE THE COURT ON THE RETURN DATE, AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED.

If no opposition is filed with the clerk of the court and served upon movant's counsel as outlined in the above notice, the motion will not appear on the motion calendar of the court on the return date, and the motion will be considered by the court without the necessity of any appearance by movant's counsel.

Unless movant anticipates written opposition to the motion, a proposed order should be submitted to the Clerk of the Court with the moving papers.

cont'd., page 3 of Rule 913.1

If written opposition to the motion is served and filed at least three business days prior to the return date, the motion will appear on the court's motion calendar on the return date and movant will be required to appear in support of the motion.

This calendar practice will apply only to motions made pursuant to 11 U.S.C. §362(d) and 11 U.S.C. §554(b). All other motions will continue to require the appearance of movant's counsel, regardless of the existence of any written opposition.

Comment

Pursuant to FRBP 9006(a), the day of service or mailing is excluded when computing the notice period.

Under subdivision (b) of this rule, cross-motions, if any, are subject to the same 15 day service requirement and time

requirements for filing original moving papers and certificates of service.

The amended subdivision (k) unifies district practice with respect to the disposition of motions made pursuant to 11 U.S.C. §362(d) and §554(b) to which no written opposition has been served and filed. Essential to the court granting the relief requested, is a duly filed certificate of service reflecting proper service of the motion. In this regard, particular reference is made to FRBP 6007 and to the provisions of FRBP 7004(b)(1)-(10), which are applicable to contested matters pursuant to FRBP 9014, and Local Bankruptcy Rule 934(a)(2).

Rule 913.2. Ex Parte Orders; Orders to Show Cause

(a) Ex Parte Orders. No ex parte order shall be granted unless based on an affidavit or motion showing cause for ex parte relief as well as cause for the relief requested and stating whether a previous application for similar relief has been made.

(b) Orders to Show Cause. No order to show cause to bring on a motion will be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary. The papers shall also state whether previous application for similar relief has been made.

(c) Prior Notice. 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 application and order and shall notify an opposing party, via counsel, if known, of the date and time of the proposed presentment of said order to show cause to the court.

Comment

If the underlying relief for which the order to show cause is sought falls within one of the ten categories listed in FRBP 7001, the application for an order to show cause must be brought within the context of a pending, filed adversary proceeding.

As incorporated by FRBP 7065, Federal Rule of Civil Procedure 65(b)(2) shall be strictly adhered to in any case in which a temporary restraining order is sought.

Rule 917. Exhibits

(a) Marking. In an adversary proceeding or a contested matter, counsel for the respective parties shall to the extent possible stipulate as to admissibility and present the exhibits to the courtroom deputy for marking prior to the trial or evidentiary hearing.

(b) Retention and Return. Unless otherwise ordered by the court, exhibits shall be retained by the clerk. Following decision or verdict and upon expiration of the time allowed for appeal, or following any appeal, exhibits shall be returned to the party who presented them.

Comment

Proposed exhibits should contain stipulations as to admissibility or statements as to the basis for objection as required by Local Bankruptcy Rule 716(b)(6).

Rule 924. Motions to Reinstate Dismissed Chapter 12 and 13 Cases

(a) A timely filed motion for reinstatement of a case dismissed for failure of the debtor to make payments shall state with particularity:

(1) the circumstances which explain why the required payments were not made;

(2) the circumstances which have changed that would 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 from the date of dismissal.

(b) Any order of reinstatement shall be prepared by the debtor and served by the debtor upon all creditors and parties in interest.

Comment

This rule applies to pending dismissed cases. If closing of the case has occurred, parties must proceed under 11 U.S.C. §350, Closing and Reopening Cases, and FRBP 5010, Reopening Cases, which necessitates the payment of a fee for reopening the case pursuant to 28 U.S.C. §1930(b). According to the Bankruptcy Court Fee Schedule promulgated by the Administrative Office of the U.S. Courts, the fee to be charged for reopening is the filing fee in

effect for commencing a new case on the date of reopening.

Rule 925. 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 Secretary of the Treasury.

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

(d) Persons Who May Not Act as Surety. Members of the bar, administrative officers, or employees of this court, the marshal, deputies, or assistants, may not act as surety in any case, adversary proceeding, contested matter or action pending in this court.

Rule 934. Notice and Service Upon the United States Trustee

(a) Notice. In addition to the notice required to be given to the Office of the United States trustee pursuant to FRBP 2002(k) and FRBP 9034(k), notice of the following matters should also be given to the United States trustee:

(1) All papers, including pleadings, motions and objections relating to the performance of any chapter 7, 12, or 13 trustee or any trustee appointed pursuant to 11 U.S.C. §1104 with respect to his/her duties as trustee. This includes, but is not limited to, all motions to compel trustee to turnover property, to remove trustee and to compel trustee to distribute assets of the estate.

(2) All papers relating to motions under 11 U.S.C. §362(d) except those relating to personal property in cases pending under chapters 7, 12 and 13 of the Bankruptcy Code.

(3) All operating reports required under Local Bankruptcy Rule 215.1.

(b) Service. The time and manner of service shall be in conformity with the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules and shall be effected contemporaneous with service upon all other parties in interest.

Comment

This rule is intended to supplement the requirements of notice and service on the United States trustee pursuant to FRBP 2002(k) and FRBP 9034(k).

INDEX

REFERENCES ARE TO LOCAL BANKRUPTCY RULES FOR THE NORTHERN DISTRICT OF NEW YORK

ACCOUNTS

registry, Rule 767

AMENDMENTS

filing requirements, Rule 109

ADMINISTRATIVE ORDERS

defined, Rule 901(1)

effecting Local Rules, Rule 101 (see comment)

ADVERSARY PROCEEDINGS

see Proceedings

APPRAISALS

access and confidentiality, Rule 604.1

ATTORNEY'S

compensation

chapter 13 counsel, Rule 216.3(b)

pro bono, Rule 214.2(f)

professionals, Rule 216.1

debtor's

duties of, Rules 202.2(d), 315.2(b)

withdrawal of - corporation, Rule 910.1(b)

practice before court, Rule 910.2

withdrawal or substitution, Rule 910.3

AUCTIONEERS

compensation and duties, Rule 605

employment of, Rule 214.1

BALLOTS

certification of, Rule 318.1

BONDING

supersedeas bond, Rule 805
sureties, Rule 925

CAPTION

(see papers)

CASES

assignment, reassignment and objections, Rule 114.1
reopen, Rule 510
transfer, Rule 114.2

CLAIMS

proof of, Rules 302.1, 302.2
exemption, amended, Rule 109(h)
objections to, Rule 109(h)

CLERK

duties of, Rules 202.2(c), 214.2(d)

COMPENSATION

(see Attorneys and Auctioneers)
applications, Rule 216.2

CONVERSIONS

filing requirements, Rule 119

CORPORATE RESOLUTION

filing requirement, Rule 107.1(f)

COSTS

adversary proceedings, Rule 755 (see comment)

COURTROOM AND ENVIRONS

mechanical devices - prohibition, Rule 507

CREDIT

obtaining chapter 11 case, Rule 401.1
obtaining chapter 12 and chapter 13 cases, Rule 401.2

DEBTOR(S)

affidavit, Rule 107.2
duties of, Rule 202.2(a) (b) (d) (e)

DEFINITIONS

as pertaining to local rules, Rule 901

DISCLOSURE STATEMENT

see statements

DISCOVERY

interrogatories, Rule 733
motions, Rule 726.2
opt out of affirmative disclosure requirements, Rule 726.1

DISMISSAL

automatic, Rule 910.1(b)
reinstate dismissed chapter 12 and chapter 13 cases, Rule 924

EXHIBITS

marking, retention and return, Rule 917

FEES (see also 27 USC 1930 (a) & (b))

in forma pauperis, Rule 106
time of payment, Rule 106

FILING

general, Rule 904.2
place of, Rule 904.2

JOINT FILING

automatic joint administration and consolidation, Rule 115.1(b)

JUDGMENT

see orders

LISTS

amended, Rule 109
filing requirements, Rules 107.1(b) 119(a) (b)
place of filing, Rule 107.1(a)

LOCAL RULES

applicability, Rule 101(b)
effective date, Rule 101 (see comment)
short title, Rule 101(a)

MATRIX

amended, Rule 109
certified - noticing, Rule 202.1(c)
filing requirements, Rule 107.1(c) (d) (e) (g)
joint administration, Rule 115.2
substantive consolidation, Rule 115.1
supplemental, Rule 119(d)

MOTIONS

adjournments, Rule 755(b)
discovery, Rule 726
failure to prosecute or defend, Rule 755
general practice, Rule 913.1
joint administration, Rule 115.2
notice and service upon United States Trustee, Rule 934
obtain credit chapter 11 case, Rule 401.1
obtain credit chapter 12 and 13 cases, Rule 401.2
reinstate dismissed chapter 12 and chapter 13 cases, Rule 924
reopen, Rule 510
sale or disposal of property in chapter 12 or chapter 13 cases, Rule 604.3
substantive consolidation, Rule 115.1

NOTICING

duties of
proponent, Rules 202.1, 315.1

ORDERS

adversary proceedings
pre-trial, Rule 716(b)
ex parte, Rule 913.2(a)
joint administration, Rule 115.2
judgment or remand by appellate court, Rule 816
notice and service upon United States Trustee, Rule 934
scheduling, Rule 716(b)
show cause, Rule 913.2(b) (c)
substantive consolidation, Rule 115.1

PAPERS

caption, Rules 904.1 (b), 115.1 (e), 115.2 (d),
covers, Rule 904.1 (c)
designation of address, Rule 202.2 (a)
general requirements, Rule 904.1 (a)
notice and service upon United States Trustee, Rule 934
service of, Rule 202.2
signing and verification, Rule 904.1 (see comment)

PARTY

duties of, Rule 202.2 (a)

PETITIONS

amended, Rule 109
filing requirements, Rule 107.1 (b)
involuntary, Rule 107.1 (g)
place of filing, Rule 107.1 (a)

PLAN

jurisdiction, Rule 316 (b)
modification before acceptance chapter 11, Rule 318.2
modification chapter 12 or chapter 13 cases, Rule 315.3
motion to confirm by "Cram Down" chapter 11, Rule 320 (c)
notice of filing and confirmation hearing in chapter 12 and 13
cases, Rule 315.1
objections to confirmation chapter 11, Rule 320 (a)
objections to confirmation chapter 12 and 13 cases, Rule
315.2
post confirmation procedure chapter 11 case, Rule 322
taxing authorities chapter 12 and 13 cases, Rule 215.2
under secured claims in chapter 12 and 13 cases, Rule 312(d)
withdrawal of objection chapter 11 case, Rule 320 (b)

PRO BONO

panel, Rule 214.2

PROCEEDINGS

adjournments, Rule 755(b)
assignment, reassignment and objections, Rule 114.1
cover sheet, Rule 904.2
discontinuance and settlement, Rule 741
failure to prosecute or defend, Rule 755
pre-trial conferences, Rule 716
transfers, Rule 114.2

PROFESSIONAL PERSONS

employment of, Rule 214.1

PROOFS OF CLAIM

creditors not originally scheduled chapter 12 and 13 cases, Rule 302.2

filing requirements, Rule 302.1

objections chapter 11 cases, Rule 307.1

objections chapter 12 and 13 cases, Rule 307.2

secured claims chapter 12 and 13 cases, Rule 307.2 (d)

PROPERTY OF ESTATE

sale of, Rule 604.2

604.3 sale or disposal of property in chapter 12 or 13 cases, Rule

valuation of personal property in chapter 13 cases, Rule 312

PRO SE

corporate prohibition, Rule 910.1

duties of, Rule 202.2

Pro Bono Counsel, Rule 214.2

REFUNDS

emergency chapter 12 and chapter 13 cases, Rule 401.3

REGISTRY ACCOUNTS see also accounts

accounts, Rule 767

REMAND

see orders

REPORTS

operating, Rule 215.1

business, Rule 215.3 required for chapter 12 and chapter 13 debtors engaged in

SCHEDULES

amended, Rule 109

filing requirements, Rules 107.1 (b), 119 (a) (b) (c)

place of filing, Rule 107.1 (a)

STORAGE

books and records, Rule 607

UNCONSTITUTIONALITY

notice of, Rule 707

UNITED STATES TRUSTEE

addresses of, Rule 107.1 (see comment)

defined, Rule 901 (12)

VENUE

assignment, reassignment and objections, Rule 114.1