

PUBLIC NOTICE: Opportunity for Public Comment on Proposed Amendments to Several Local Bankruptcy Rules Effective December 1, 2017

United States Bankruptcy Court
Northern District of New York
August 31, 2017

The Local Rules Standing Committee and the Judges for the United States Bankruptcy Court for the Northern District of New York are proposing amendments to several local rules and have requested that the proposed amendments be circulated to the bar for comment. The amended rules will become effective December 1, 2017. Please submit all comments electronically to rules_comments@nynb.uscourts.gov The deadline for submitting comments is October 13, 2017.

Amendments are being proposed to the following rules:

- Rule 1001-1
- Rule 1006-1
- Rule 1007-1
- Rule 1015-1
- Rule 2014-2
- Rule 2016-3
- Rule 3007-1
- Rule 3015-1
- Rule 4001-1
- Rule 9001-1
- Rule 9013-6

The current version of the rules with the proposed amendments appearing in redline are attached.

RULE 1001-1 SHORT TITLE – APPLICABILITY

- (a) **Short Title.** These local rules shall be known as the Local Bankruptcy Rules for the Northern District of New York and may be referred to and cited in papers filed in this Court as “Local Bankruptcy Rule - ” or “LBR - .”
- (b) **Applicability.** The Local Bankruptcy Rules supplement the [Federal Rules of Bankruptcy Procedure](#). These Local Bankruptcy Rules shall govern all proceedings in bankruptcy cases filed in the Northern District of New York.
- (c) **Sectional References.** Unless otherwise indicated, all sectional references herein are to [Title 11 of the United States Code](#).
- (d) **Hyperlinks.** Unless otherwise indicated, hyperlinks are to [Official Forms](#), [Local Forms](#) and [Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means](#) (“Administrative Procedures”) available on the Court’s website located at www.nynb.uscourts.gov.
- (e) **Defined Terms.** See [LBR 9001-1](#).

Comment

Under the authority of [Fed. R. Bankr. P. 9029](#), the District Court may make and amend rules of practice and procedure not inconsistent with the [Federal Rules of Bankruptcy Procedure](#) and that do not prohibit or limit the use of the official forms. [Pursuant to Fed. R. Bankr. P. 9029, the District Court exercised its discretion and authorized the Bankruptcy Court to amend, revise and supplement the Local Bankruptcy Rules, in accordance with certain limitations, without formal submission to the District Court. See, General Order #21 signed March 7, 2014, by then Chief District Court Judge Gary L. Sharpe.](#)

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

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

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

RULE 1006-1 FILING FEE

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

Comment

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

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

RULE 1007-1

**STATEMENT ~~ABOUT~~ ~~OF~~ SOCIAL SECURITY
NUMBERS, PAYMENT ADVICES AND FINANCIAL
MANAGEMENT CERTIFICATE**

(a) ~~Verified Statement About Debtor's of Full Social Security Number.~~ Fed. R. Bankr. P. 1007(f) requires the debtor to submit a verified statement (Official Form B121) that sets forth the debtor's of his or her full social security number, or states the debtor does not have a social security number.

(1) ~~-Debtor Has a Social Security Number.~~ The completed Form B121 verified statement signed by the debtor is not filed in the case and does not become a part of the Court record or the public record. The completed Form B121 and verified statement shall be retained by the debtor's attorney for two (2) years in accordance with LBR 9011-3(e) ~~or, if the debtor is pro se, by the debtor for two (2) years.~~

(2) ~~Debtor Does Not Have a Social Security Number.~~ The debtor shall verify that he or she does not have a social security number by checking the appropriate box in Part 2 of Form B121. The completed Form B121 should be filed as a separate event in CM/ECF. It should not be filed as part of the petition. To file Form B121 use the following string of event codes: Bankruptcy > Other > Statement of No Social Security Number.

(a)(b) ~~Submission with Petition Filed in Paper Format.~~ When a petition is filed in paper format, the debtor is required to submit the original signed Form B121 statement contemporaneously with the filing of the petition.

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

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

(1) Submit, in paper format, to the Clerk an amended Form B121 verified statement indicating both the incorrect social security number and the debtor's full and correct social security number;

(2) Serve the amended Form B121 verified statement referenced in sub paragraph (d)(c)(1) of this Rule upon all creditors, the trustee, and the United States trustee;

(3) File a certificate of service; and

(4) If the error affects the last four (4) digits of the debtor's social security

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

- (d) **Payment Advices.** If a debtor cannot comply with § 521(a)(1)(B)(iv), the debtor shall complete and file a [Payment Advice Form](#).
- (e) **Personal Financial Management Certificate.** Every individual debtor in a case filed under chapter 7, ~~chapter~~ 11, or ~~chapter~~ 13 must complete a post-petition instructional course concerning personal financial management as required by Fed. R. Bankr. P. 1007(b)(7).
 - (1) **Failure to timely file evidence of completion of course.** If a debtor under chapter 7 or 13 fails to file a ~~certification statement~~ (Official Form [B423](#)) or a certificate from an approved provider evidencing completion of a course in financial management as required under Fed. R. Bankr. P. 1007(b)(7) within the time limits prescribed by Fed. R. Bankr. P. 1007(c), the Clerk may close the case without discharge and shall notify creditors. A motion to reopen the case to obtain a discharge will be subject to the applicable fee.
 - (2) **Deceased Debtor Excused from Compliance.** If a debtor dies after the filing of the petition and prior to completing the course in financial management, the debtor's attorney may file an ex parte application requesting a waiver of the completion of the course. A redacted version of the death certificate shall be attached as an exhibit to the application with service on the United States trustee and the case trustee.
- (f) **Noncompliance.** The failure to comply with the requirements of this Rule and the Federal Rules of Bankruptcy Procedure may subject the case to dismissal.

RULE 1007-1

**STATEMENT ABOUT SOCIAL SECURITY
NUMBERS, PAYMENT ADVICES AND FINANCIAL
MANAGEMENT CERTIFICATE**

- (a) **Verified Statement About Debtor's Social Security Number.** Fed. R. Bankr. P. 1007(f) requires the debtor to submit a verified statement (Official Form B121) that sets forth the debtor's full social security number, or states the debtor does not have a social security number.
- (1) **Debtor Has a Social Security Number.** The completed Form B121 signed by the debtor is not filed in the case and does not become a part of the Court record or the public record. The completed Form B121 shall be retained by the debtor's attorney for two (2) years in accordance with LBR 9011-3(e).
- (2) **Debtor Does Not Have a Social Security Number.** The debtor shall verify that he or she does not have a social security number by checking the appropriate box in Part 2 of Form B121. The completed Form B121 should be filed as a separate event in CM/ECF. It should not be filed as part of the petition. To file Form B121 use the following string of event codes: Bankruptcy > Other > Statement of No Social Security Number.
- (b) **Submission with Petition Filed in Paper Format.** When a petition is filed in paper format, the debtor is required to submit the original signed Form B121 contemporaneously with the filing of the petition.
- (c) **Amendment of Social Security Number.** If a petition is filed with an incorrect social security number, debtor's counsel shall immediately:
- (1) Submit, in paper format, to the Clerk an amended Form B121 indicating both the incorrect social security number and the debtor's full and correct social security number;
- (2) Serve the amended Form B121 referenced in subparagraph (c)(1) upon all creditors, the trustee, and the United States trustee;
- (3) File a certificate of service; and
- (4) If the error affects the last four (4) digits of the debtor's social security number, in addition to submitting an amended verified statement, also file an amended petition showing the corrected last four (4) digits of the debtor's social security number.
- (d) **Payment Advices.** If a debtor cannot comply with § 521(a)(1)(B)(iv), the debtor shall complete and file a Payment Advice Form.

- (e) **Personal Financial Management Certificate.** Every individual debtor in a case filed under chapter 7, 11, or 13 must complete a post-petition instructional course concerning personal financial management as required by Fed. R. Bankr. P. 1007(b)(7).
- (1) **Failure to timely file evidence of completion of course.** If a debtor under chapter 7 or 13 fails to file a certification ([Official Form B423](#)) or a certificate from an approved provider evidencing completion of a course in financial management as required under [Fed. R. Bankr. P. 1007\(b\)\(7\)](#) within the time limits prescribed by [Fed. R. Bankr. P. 1007\(c\)](#), the Clerk may close the case without discharge and shall notify creditors. A motion to reopen the case to obtain a discharge will be subject to the applicable fee.
 - (2) **Deceased Debtor Excused from Compliance.** If a debtor dies after the filing of the petition and prior to completing the course in financial management, the debtor's attorney may file an ex parte application requesting a waiver of the completion of the course. A redacted version of the death certificate shall be attached as an exhibit to the application with service on the United States trustee and the case trustee.
- (f) **Noncompliance.** The failure to comply with the requirements of this Rule and the Federal Rules of Bankruptcy Procedure may subject the case to dismissal.

RULE 1015-1**CONSOLIDATION OR JOINT ADMINISTRATION****(a) Cases Involving Spouses Joint Case.**

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

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

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

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

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

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

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

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

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

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

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

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

Comment

Consolidation includes substantive consolidation.

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

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

RULE 2014-2**ADMISSION TO PRACTICE/DESIGNATION FOR SERVICE**

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

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

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

~~(1)~~ (A) Waiver of Fee. The admission fee shall be waived for all attorneys in the full-time employ of the United States Government pursuant to the District Court Local Rule 83.1(a)(5).

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

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

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

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

(C) Assist the student to the extent necessary;

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

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

- (2) **Student Eligibility.** In order to appear, the student shall:
- (A) Be enrolled in a law school approved by the American Bar Association;
 - (B) Have completed legal studies amounting to at least three (3) semesters, or the equivalent;
 - (C) Be recommended by either the dean or a faculty member of his or her law school as a Student Practitioner, which recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk;
 - (D) Neither ask for, nor receive any compensation or remuneration of any kind for the services performed from the person on whose behalf they are rendered, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services. Neither the student, nor anyone on the student's behalf, shall seek recovery of attorneys' fees from an adverse party for the services rendered by the student as a student practitioner, except for the successful prosecution of a willful violation of the automatic stay or of the discharge injunction pursuant to §§ 362 and 524 and for the defense of an § 523(a)(2) nondischargeability action;
 - (E) Certify in writing that the student is familiar with the federal procedural and evidentiary rules as well as these rules; and
 - (F) Complete and file a [Student Practice Authorization Form](#) with the Court together with a proposed order for appearance as a Student Practitioner in the bankruptcy case and/or adversary proceeding in which the client consent has been obtained.
- (3) **Permitted Student Services.** The Student Practitioner may:
- (A) Appear as counsel in Court or at other proceedings when consent of the client and the supervising attorney has been filed and when the Court has approved the student's request to appear in the particular case;
 - (B) Prepare and sign affidavits, motions, petition, answers, objections, replies, memoranda and legal briefs, and other documents (collectively, "Documents") in connection with any matter in which the student has met the conditions of subparagraph (A) above. The Documents must

also be signed by the supervising attorney with the original maintained in the case file.

- (4) **Term of Student Admission.** A Student Practitioner whose application has been approved may continue to appear in a particular case as a Student Practitioner until the student has graduated from law school and is formally admitted to the bar or until termination by the Court. The Court sua sponte may terminate a Student Practitioner's right to appear at any time without notice of hearing and without showing of cause.
- (d) **Designation for Service.** A Court may require an attorney who does not have an office in the Northern District of New York to designate a resident member of the bar of the Northern District of New York for service of process or papers.

RULE 2016-3

REQUIRED SERVICES TO BE RENDERED BY DEBTOR'S ATTORNEY

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

- (b) **Required Attorney Duties in a Chapter 7, Chapter 12 and Chapter 13 Case.**
 - (1) **Retainer Agreement.** Absent special circumstances approved by the Court, an attorney representing the debtor in a chapter 7, chapter 12 or chapter 13 **proceeding case** in this district shall have a written retainer agreement that sets forth the fee arrangement and comprehensive services to be performed for the debtor in which the attorney agrees to:
 - (A) Analyze the client's financial situation, and advise and assist the client in determining whether to file a petition under the Bankruptcy Code;
 - (B) Prepare and file the petition, all required lists, schedules and statements, as well as any amendments that may be necessary or appropriate;
 - (C) File the certificate required from the individual debtor from an approved nonprofit budget and credit counseling agency for pre-petition credit counseling;
 - (D) File the debtor's payment advices together with the "Payment Advice Form" (**Payment Advice Form**);
 - (E) Appear personally and represent the debtor at any scheduled meeting of creditors under **§ 341**, unless otherwise ordered by the Court;
 - (F) Amend any list, schedule, statement, and/or other document required to be filed with the petition as may be necessary or appropriate;
 - (G) Advise the debtor with respect to any reaffirmation agreement; negotiate, prepare and file reaffirmation agreements if in the best interest of the debtor; and attend all hearings scheduled on any reaffirmation agreement signed by the debtor;
 - (H) Prepare and file any motion as may be necessary or appropriate including but not limited to a motion to avoid a lien on exempt property, to obtain credit, to sell or abandon property, and to assume or reject a lease;

- (I) Remove involuntary wage garnishments and/or voluntary wage assignments, as appropriate;
 - (J) Compile and forward to the trustee and the United States trustee any documents and information requested;
 - (K) Consult with the debtor and if there is a valid defense or explanation, respond to a motion for relief from the automatic stay;
 - (L) File the debtor's certification of completion of instructional course concerning financial management ([Official Form 423](#));
 - (M) Represent the debtor in any adversary proceeding filed in the case; and
 - (N) Disclose any agreement and fee arrangement regarding the potential retention of co-counsel.
- (2) **Chapter 7 Case.** In addition to the services identified in subparagraph (b)(1) above, and as may be needed or warranted by the facts of the case, the attorney retained in a chapter 7 case shall prepare and file a motion under [§ 722](#) to redeem exempt or abandoned personal property.
- (3) **Chapter 12 and Chapter 13 Cases.** In addition to the duties identified in subparagraph (b)(1) above, and as may be needed or warranted by the facts of the case, the attorney retained in a chapter 12 or chapter 13 case shall:
- (A) Attend the original and any adjourned confirmation hearing and address all objections to confirmation;
 - (B) Negotiate the value of secured claims or, as necessary, represent the debtor at valuation hearings in connection with the confirmation hearing;
 - (C) Prepare and file the necessary pleadings to partially or wholly avoid mortgage liens against the debtor's real property;
 - ~~(D)~~ (D) [Within the Local Form Plan in a chapter 13 case provide for the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest;](#)
 - ~~(D)~~(E) Prepare necessary pre-confirmation amendments and- post—confirmation modifications to the plan;
 - ~~(E)~~(F) Timely review all filed proofs of claim, and object to and file proofs of claim as appropriate;
 - ~~(F)~~(G) [Oversee the filing of all operating reports in a chapter 12 case](#)

and any required in [a chapter 13 case](#);

- ~~(G)~~**(H)** Represent the debtor in connection with motions for dismissal or conversion;
- ~~(H)~~**(I)** File the appropriate affirmation required under [Rule 4004-1\(b\)](#) to permit the inference that the debtor is entitled to a discharge; and
- ~~(I)~~**(J)** Attend any discharge hearing scheduled and address all objections to discharge.

Comment

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

RULE 3007-1 CLAIMS AND OBJECTIONS TO CLAIMS

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

~~(b) **Service of Objections to Claims.** In addition to the service required by Fed. R. Bankr. P. 7004 and 9014, a claim objection must be served upon the claimant at the address (and in care of the individual) designated in Box 3 on the proof of claim (Official Form 410) and a certificate of service must be filed. Additionally, manner of service must comply with Fed. R. Bankr. P. 3007(a)(2).~~

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

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

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

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

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

- ~~(1) The date and terms of the disposition of the collateral;~~
- ~~(2) The name of the transferee of the collateral;~~
- ~~(3) The consideration received; and~~
- ~~(4) A detail of all charges claimed in retaking, holding, and disposing of the property.~~

Comment

[Service of an objection to the allowance of a claim is governed by Fed. R. Bankr. P. 2002 and 3007.](#)

Although Fed. R. Bankr. P. 3007(a)(1) provides that an objection to the allowance of a claim and a notice of objection must be filed and served 30 days prior to either (1) a scheduled hearing on the objection or (2) any deadline for the claimant to request a hearing, in this Court the time of filing and service shall remain as stated in Paragraph (a) of this Rule, not later than 30 days prior to the hearing on the objection.

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

RULE 3015-1

CHAPTER 13 – PLAN

- (a) **Format of Plan.** A debtor shall file a chapter 13 plan using the Local Form Plan Model Plan.
- (b) **Notice of Plan and the Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan.**
- (1) **Plan Filed with Petition.** If the plan is filed with the petition, the Bankruptcy Noticing Center shall furnish copies of the plan to all parties in interest and notice the time fixed for filing objections to and the hearing to consider confirmation of the plan.
- (2) **Plan Filed after Petition.** If the plan is filed after the petition, the debtor shall serve a copy of the plan and Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan upon all parties in interest not later than 28 days prior to the confirmation hearing and, if necessary, adjourn the hearing date to provide the requisite 28 days' notice. Not later than seven (7) days prior to the confirmation hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.
- (c) **Inclusion in Plan of Relief Governed by Fed. R. Bankr. P. 7001 (Adversary Proceeding) or Fed. R. Bankr. P. 9014 (Contested Matter).**
- (1) **Allowed Contested Matters.** If a plan includes a provision for relief that is governed by Fed. R. Bankr. P. 7001 or Fed. R. Bankr. P. 9014, such relief shall be obtained by separate adversary proceeding or motion except to the extent the plan proposes to do any of the following:
- (A) Value collateral to establish the amount of a secured claim including voiding a wholly unsecured junior mortgage lien against the debtor's principal residence;
- (B) Set the interest rate for a secured claim; ~~or~~
- ~~(C) Assume and/or reject an unexpired lease or executory contract, each of which shall be deemed an "Allowed Contested Matter", or~~
- ~~(D) Avoid a judicial lien or non-possessory purchase money security interest,~~
- each of which shall be deemed an "Allowed Contested Matter."
- (2) Notice Required If Plan Includes Allowed Contested Matter. If the plan includes an Allowed Contested Matter as set forth in subparagraph (c)(1), a copy of the plan and Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan must be served on all affected creditors by the debtor pursuant to Fed. R. Bankr. P. 7004. The Debtor shall promptly file a certificate of service evidencing compliance with the Rule but in no event later than seven (7) days prior to the confirmation

hearing.

(A) Affidavits in Support of Allowed Contested Matters.

(i) If the plan proposes to void a wholly unsecured junior mortgage lien against the debtor's principal residence, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each senior lien against the property.

(ii) If the plan proposes to avoid a judicial lien or non-possessory purchase money security interest, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each additional lien against the property.

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

(e) ~~Disbursement of §~~ Section 1326 Plan Payments by Debtor and Disbursements by Trustee.

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

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

~~(3)~~ The trustee is authorized to disburse pay pre-confirmation adequate protection payments to a secured creditor whose claim is secured by personal property pursuant to § 1326(a)(1) in an amount as set forth in the proposed plan. If the plan does not propose any such payment, then the trustee shall remit on a monthly basis to such creditor an amount equal to 1.5% of the value of the claim proposed to be paid by the debtor through the plan up until confirmation. However, no such payments shall be made to a creditor until a proof of claim is filed. These Ppre-confirmation adequate protection

payments will commence ~~shall be made to the creditors with the trustee's first monthly disbursement~~ within thirty (30) days after ~~of the filing of the proof of claim provided the trustee has sufficient funds.~~ At the time of such payments, ~~the trustee is authorized to retain an administrative fee for effecting the payments described herein and shall collect such fee at the time of making the payment from the funds on hand with the trustee. The allowed fee shall be equal to the percentage fee established by the Attorney General pursuant to 28 U.S.C. § 586(e)(1)(B) in effect at the time of disbursement. The trustee shall apply each § 1326(a)(1) pre confirmation payment to the principal outstanding on the creditor's claim.~~

(3)

(4) The trustee is authorized to disburse pre-confirmation monthly payments to a secured creditor whose claim is secured by real property in an amount as set forth in the proposed plan. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation monthly payments will commence within thirty (30) days after the filing of the proof of claim and continue until confirmation of the plan provided the trustee has sufficient funds.

(4)(5) If the case is dismissed prior to confirmation, secured the creditors entitled to payments from the trustee pursuant to subparagraphs (e)(3) or (4) shall receive from the trustee any § 1326 pre-confirmation adequate protection payment or monthly payment due and owing from funds collected by the trustee, unless such creditor has previously received relief under 11 U.S.C. § 362 (see LBR 3007-1(fe)) or as otherwise ordered by the Court under § 1326(a)(1)(A), less statutory trustee fees and specifically allowed § 503(b) claims, including debtor's attorney fees.

Comment

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

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

RULE 3015-1

CHAPTER 13 – PLAN

- (a) **Format of Plan.** A debtor shall file a chapter 13 plan using the Local Form Plan
- (b) **Notice of Plan and the Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan.**
- (1) **Plan Filed with Petition.** If the plan is filed with the petition, the Bankruptcy Noticing Center shall furnish copies of the plan to all parties in interest and notice the time fixed for filing objections to and the hearing to consider confirmation of the plan.
- (2) **Plan Filed after Petition.** If the plan is filed after the petition, the debtor shall serve a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) upon all parties in interest not later than 28 days prior to the confirmation hearing and, if necessary, adjourn the hearing date to provide the requisite 28 days' notice. Not later than seven (7) days prior to the confirmation hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.
- (c) **Inclusion in Plan of Relief Governed by Fed. R. Bankr. P. 7001 (Adversary Proceeding) or Fed. R. Bankr. P. 9014 (Contested Matter).**
- (1) **Allowed Contested Matters.** If a plan includes a provision for relief that is governed by Fed. R. Bankr. P. 7001 or Fed. R. Bankr. P. 9014, such relief shall be obtained by separate adversary proceeding or motion except to the extent the plan proposes to do any of the following:
- (A) Value collateral to establish the amount of a secured claim including voiding a wholly unsecured junior mortgage lien against the debtor's principal residence,
- (B) Set the interest rate for a secured claim,
- (C) Assume and/or reject an unexpired lease or executory contract, or
- (D) Avoid a judicial lien or non-possessory purchase money security interest,
- each of which shall be deemed an "[Allowed Contested Matter](#)."
- (2) **Notice Required If Plan Includes Allowed Contested Matter.** If the plan includes an Allowed Contested Matter as set forth in subparagraph (c)(1), a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) must be served on all affected creditors by the debtor pursuant to [Fed. R. Bankr. P. 7004](#). The Debtor shall promptly file a certificate of service evidencing compliance with the Rule but in no event later than seven (7) days prior to the confirmation hearing.

(A) Affidavits in Support of Allowed Contested Matters.

- (i)** If the plan proposes to void a wholly unsecured junior mortgage lien against the debtor's principal residence, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each senior lien against the property.
 - (ii)** If the plan proposes to avoid a judicial lien or non-possessory purchase money security interest, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each additional lien against the property.
- (d) Certification of Compliance with this Rule.** The debtor shall certify in all cases proper notice and service in compliance with this Rule by filing, not later than fourteen (14) days prior to the confirmation hearing, a [Certification Pursuant to Local Bankruptcy Rule 3015-1](#).
- (e) Section 1326 Plan Payments by Debtor and Disbursements by Trustee.**
- (1)** The debtor shall commence making plan payments to the trustee within thirty (30) days after the order for relief or the order converting the case to chapter 13. Said payment shall include the amounts necessary to pay pre-confirmation adequate protection payments plus the statutory trustee's fees. The debtor shall not reduce plan payments to the trustee under § 1326(a)(1)(C) as a result of these adequate protection payments, without an order of the Court.
 - (2)** A creditor may file a motion requesting a change in the amount of § 1326(a)(1) pre-confirmation payments pursuant to § 1326(a)(3). Until the creditor's motion is resolved, the trustee shall continue to make pre-confirmation adequate protection payments to such creditor as set forth herein.
 - (3)** The trustee is authorized to disburse pre-confirmation adequate protection payments to a secured creditor whose claim is secured by personal property pursuant to § 1326(a)(1) in an amount as set forth in the proposed plan. If the plan does not propose any such payment, then the trustee shall remit on a monthly basis to such creditor an amount equal to 1.5% of the value of the claim proposed to be paid by the debtor through the plan up until confirmation. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation adequate protection payments will commence within thirty (30) days after the filing of the proof of claim provided the trustee has sufficient funds.

- (4) The trustee is authorized to disburse pre-confirmation monthly payments to a secured creditor whose claim is secured by real property in an amount as set forth in the proposed plan. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation monthly payments will commence within thirty (30) days after the filing of the proof of claim and continue until confirmation of the plan provided the trustee has sufficient funds.
- (5) If the case is dismissed prior to confirmation, secured creditors entitled to payments from the trustee pursuant to subparagraphs (e)(3) or (4) shall receive from the trustee any § 1326 pre-confirmation adequate protection payment or monthly payment due and owing from funds collected by the trustee, unless such creditor has previously received relief under 11 U.S.C. § 362 (see LBR 3007-1(e)) or as otherwise ordered by the Court.

Comment

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

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

RULE 4001-1 RELIEF FROM THE AUTOMATIC STAY

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

- (1) The factual grounds that establish standing to bring the motion;
- (2) The specific statutory basis and factual grounds for relief sought, including with specificity the contractual default of the debtor;
- (3) The specific description of the collateral, including, where appropriate, the vehicle identification number (VIN), make, model, serial number, street address, and recording information (including the Clerk's office volume/page number);
- (4) The names and purported interests of all parties known or, discovered after reasonable investigation, who claim to have an interest in the property;
- (5) The amount of the outstanding indebtedness on each lien, admissible evidence as to value of the collateral, and the basis for the valuation;
- (6) Legible and complete copies of movant's note, recorded mortgage, security agreement, modification(s), and assignment(s), if any; and
- (7) Evidence of perfection of the movant's lien or interest.

(b) Motions Involving Real Property in Cases Where the Debtor is an Individual.

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

(2) [A proposed order terminating the stay as to real property shall conform substantially to the Local Form § 362 Order](#)

~~(b)~~(3)

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

- (1) State with specificity those allegations of the secured creditor that the debtor disputes;
- (2) Articulate the debtor's legal and factual basis for asserting that the secured

creditor is not entitled to relief from stay; and

- (3) Include copies of records showing proof of any payments that the secured creditor has not acknowledged as having been received on the obligation or include an explanation as to why those records are not appended and the date they will be filed. If the motion is based upon a lack of equity in the property, then the debtor shall be required to include admissible evidence of value in the response.
- (d) **Grounds for Denial.** Upon the request of a party in interest, the Court may deny without prejudice a motion for relief from stay involving encumbered real or personal property that fails to include the items recited in paragraph (a) of this Rule and/or that fails to include a completed copy of the form required under paragraph (b) of this Rule.
- (e) **Failure to Support Opposition.** The debtor's failure to meet the requirements set forth in paragraph (c) of this Rule constitutes cause for the Court to deny the debtor's request for additional time to produce records and grant the motion as unopposed.
- (f) **Surplus Proceeds.** Movant shall include in the proposed order granting a motion for relief from the stay a directive that (i) the case trustee be added as a necessary party to receive notice of the report of sale and surplus money proceedings; and (ii) closure of the case shall not constitute an abandonment of the trustee's interest, if any, in any surplus proceeds.

RULE 9001-1 DEFINITIONS

In these Local Bankruptcy Rules:

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

~~17~~18) **“Public Intake Counter”** means the counter located within the Clerk’s office where the public may interact with the Clerk’s staff;

~~18~~19) **“Red-lined”** means a revised version of a document showing additions in bold or colored type and deletions crossed out;

~~19~~20) **“Student Practitioner”** means a law student admitted to practice before the court pursuant to [LBR 2014-2](#);

~~20~~21) **“United States trustee”** means the United States trustee, acting United States trustee, assistant United States trustee, or attorney therefore, for the Northern District of New York, Region 2; and

~~21~~22) **“United States Trustee Fee Guidelines”** means the [United States Trustee Fee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses](#) filed under 11 U.S.C. § 330 adopted by the Executive Office for United States Trustees on January 30, 1996, as subsequently revised.

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

Comment

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

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

- (1) The date the bankruptcy was filed (“petition date”);
- (2) A description of the real property owned by the debtor on the petition date to which the lien has attached;
- (3) A statement that the debtor has claimed the property as exempt on Schedule C, the amount of the claimed exemption and the statutory basis for the exemption (i.e., 11 U.S.C. § 522(b)(3) and N.Y. CPLR 5206(a), or, 11 U.S.C. § 522(b)(2) and (d)(1) and/or (d)(5));
- (4) Whether the debtor owns the property solely or jointly and, if owned jointly, the nature of the debtor’s ownership interest in the property (e.g., joint tenant, tenant by the entirety or tenant in common);
- (5) Proof as to the value of the real property as of the petition date;
- (6) The name(s) of the judicial lien creditor(s), listed in order of their priority, the amount(s) of the lien(s) sought to be avoided, and the recording information for each judgment;
- (7) For each lien sought to be avoided, a statement that the lien does not secure a debt arising out of a domestic support obligation of the kind described in § 523(a)(5);
- (8) A copy of the recorded judgment or transcript of the judgment that reflects recording information and the name and address of the attorney who obtained the judgment on behalf of the creditor;
- (9) The name(s) of the holder(s) of each additional lien against the property, the nature of such lien(s) (e.g., mortgage, tax, or statutory) and proof of the amount of each lien as of the petition date;
- (10) The address of all other real property owned by the debtor (i.e., rental property, commercial property);
- (11) The date on which the debtor acquired an interest in the real property; and
- (12) A showing that the lien impairs the claimed exemption in that the sum of the amounts described in subparagraphs (3), (6) and (9) above exceeds the value that the debtor’s interest in the property would have in the absence of any liens.

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

Comment

In a chapter 13 case, relief under § 522(f)(1)(A) should be sought through the Local Form Plan and not by motion practice.

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

statement as evidence of a lien amount.

Code § 522(f) operates solely with respect to judicial liens. See § 101(36) for the definition of “judicial lien.” A statutory lien, as *e.g.* a mechanic’s lien, cannot be avoided under this section. See § 101(53) for the definition of “statutory lien.” Papers submitted in support of the motion should allow the court to readily ascertain the nature of the lien. See *In re Schick*, 418 F.3d 321 (3d Cir. 2005) (discussing the distinction between judicial liens, which are avoidable under § 522(f), and statutory liens, which are not.)