

**PUBLIC NOTICE: Opportunity for Public Comment on Proposed Amendments to Several Local Bankruptcy Rules Effective December 1, 2019.**

United States Bankruptcy Court  
Northern District of New York  
August 16, 2019

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, 2019. Please submit all comments electronically to [rules\\_comment@nynb.uscourts.gov](mailto:rules_comment@nynb.uscourts.gov). The deadline for submitting comments is September 30, 2019.

Amendments are being proposed to the following rules:

- 1002-1
- 2019-1
- 4001-1
- 5005-1
- 7003-1
- 7055-1
- 9013-1
- 9037-1

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

## **RULE 1002-1      COMMENCEMENT OF THE CASE**

- (a) **Signing of Petition.** The petition must be signed and dated by the debtor contemporaneously with the filing. An electronic signature satisfies the requirement that petitions, verifications, resolutions, declarations, etc. be signed. An electronic signature is considered an original signature upon the filed documents for all purposes under the Bankruptcy Code, relevant federal and state statutes, and applicable federal rules.
- (b) **Where to File.**

  - (1) Except as set forth below, a petition, motion, pleading, memorandum of law, or other document required to be in writing must be filed electronically or in the Clerk's office where the assigned judge sits.
  - (2) An attorney may use public scanners and computers located at the Public Intake Counter. An unrepresented individual may file all papers and pleadings in paper format in any Clerk's office.
- (c) **Authority for Non-Individual to File.** A voluntary petition filed by a non-individual, including a corporation, LLC, partnership or LLP, shall be accompanied by a copy of the appropriate document, duly attested to, authorizing such filing.
- (d) **Deficient Petitions and Papers.** The Clerk may issue a notice specifying filing deficiencies to the filer of the document.
- (e) **Noncompliance.** The failure to comply with the requirements of this Rule and the Federal Rules of Bankruptcy Procedure may subject the case to dismissal.

### **Comment**

Although [Fed. R. Bankr. P. 5005\(a\)\(1\)](#) requires the Clerk to accept papers for filing that are not in proper form, paragraph (e) of this Rule makes clear that the Court may take appropriate action to enforce this Rule.

**RULE 1002-1      COMMENCEMENT OF THE CASE**

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

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

**(e)(b)      Where to File.**

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

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

~~**(d)(c)      Authority for Non-Individual to File. Corporate Resolution.** A voluntary petition filed by a non-individual, including a corporation, LLC, partnership or LLP, shall be accompanied by a copy of the ~~corporate resolution or other~~ appropriate document ~~authorization~~, duly attested to, authorizing such filing.~~

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

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

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

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

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

#### Comment

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

~~Once an initial waiver of the filing fee is granted under Fed. R. Bankr. P. 1006(e), 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.~~

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**LBR 2091-1 Attorneys – Withdrawal Other Than by Substitution**

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

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## **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](#).
- (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.** 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.



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- (4) The names and purported interests of all parties known or, discovered after reasonable investigation, who claim to have an interest in the property;
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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.
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**RULE 5005-1 ELECTRONIC FILING AND SERVICE**

**(a) Filing of any Petition, List, Schedule, Statement, Amendment, Pleading, Affidavit, Proof of Claim, and Other Papers (each a “document”).**

**(1) By a Represented Entity.** An entity represented by an attorney must file documents electronically in accordance with the [Administrative Procedures](#), unless otherwise permitted by the Court.

**(2) By an Unrepresented Individual.** An individual not represented by an attorney must file documents in paper format. Documents may be filed in any of the Clerk’s offices in the district.

**(b) Place of Filing.** A document required to be in writing must be filed electronically or in the Clerk’s office where the assigned judge sits.

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

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

**(e) Service via CM/ECF.** A document is considered served when sent to a registered user by filing it through CM/ECF.

**(f) Email and Facsimile.** The Clerk will not accept documents submitted via email or facsimile for filing.

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

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

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**(b) ~~Where to File~~Place of Filing.**

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

~~(2)(1) An attorney may use public scanners and computers located at the Public Intake Counter. A pro se party may file all papers and pleadings in paper format in any Clerk’s office.~~

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**RULE 7003-1      ADVERSARY PROCEEDING COVER SHEET**

A complaint filed to commence an adversary proceeding shall be accompanied by an Adversary Proceeding Cover Sheet ([Official Form 1040](#)). The cover sheet summarizes basic information about the adversary proceeding that the Clerk needs to process it and to prepare required statistical reports on court activity.

The Northern District of New York requires an Adversary Proceeding Cover Sheet for all proceedings filed online via CM/ECF and in paper format. The Clerk's office relies on the cover sheet to ensure all information has been entered and to compare party names and addresses in the complaint to those in the bankruptcy case for noticing and service accuracy.

**Comment**

A fillable .pdf form Adversary Proceeding Cover Sheet is available on the Court's website at: [\[insert link to fillable form\]](#).

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**Comment**

A fillable .pdf form Adversary Proceeding Cover Sheet is available on the Court's website at: [insert link to fillable form].

**RULE 7055-1      DEFAULT JUDGMENT**

- (a)      Default Judgment Application Deadline.** A plaintiff entitled to a default judgment due to defendant’s failure to answer, appear, or otherwise defend the action, must file the appropriate application for default judgment within forty-five days after the first day plaintiff is entitled to entry of default. Failure to seek a default judgment within forty-five (45) days after default occurs may result in the Court dismissing the adversary proceeding pursuant to [Fed. R. Bankr. P. 7041](#).
- (b)      Clerk’s Entry of Default.** Prior to filing an application for default judgment, the party seeking default judgment shall obtain the Clerk’s Entry of Default pursuant to Fed. R. Bankr. P. 7055. For the Clerk to enter a default, the applicant must show by sworn statement the following:

  - (1)**      The summons and complaint have been timely and properly served on the defaulting party as required by [Fed. R. Bankr. P. 7004](#);
  - (2)**      An accurate and complete certificate of service has been filed. A copy of the certificate of service must be attached as an exhibit to the sworn statement in support of the application for the Clerk’s Entry of Default;
  - (3)**      The defaulting party is not an infant, an incompetent person, nor in the military service (see comment); and
  - (4)**      The defaulting party has failed to plead or otherwise defend the action.
- (c)      Obtaining a Default Judgment from the Clerk.** The Clerk may enter a default judgment if the defaulting party is not the debtor, the underlying action is a core proceeding and the default judgment is for a sum certain and does not include a request for attorney’s fees or other substantive relief. A party seeking entry of a default judgment by the Clerk must file the following:

  - (1)**      A sworn statement of the amount due and the basis for the same;
  - (2)**      A copy of the Clerk’s Entry of Default; and
  - (3)**      A proposed judgment for signature by the Clerk.
- (d)      Obtaining a Default Judgment from the Court.**

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

    - (A)**      A motion for default judgment;
    - (B)**      A sworn statement under [Fed. R. Civ. P. 55\(b\)\(2\)](#), made applicable by [Fed. R. Bankr. P. 7055](#);
    - (C)**      A copy of the Clerk’s Entry of Default;
    - (D)**      A sworn statement of amount due including a statement of the damages

- being requested and the basis for them;
- (E) A proposed order granting the motion for judgment by default;
  - (F) A proposed judgment, if applicable, for signature by the Court; and
  - (G) If the party against whom a default judgment is sought has appeared in the proceeding or is the debtor, an affidavit of service indicating notice of the motion was provided to the defaulting party as required by [Fed. R. Bankr. P. 9014](#).
- (2) **Non-Core Proceeding.** Where the adversary proceeding is a non-core proceeding, plaintiff may seek a Recommendation from the Court to the District Court that a default judgment be entered by filing the following:
- (A) An sworn statement under [Fed. R. Civ. P. 55\(b\)\(2\)](#), made applicable by [Fed. R. Bankr. P. 7055](#);
  - (B) A copy of the Clerk's Entry of Default;
  - (C) A sworn statement of amount due including a statement of the damages being requested and the basis for them;
  - (D) A proposed order transmitting record to District Court, combined with the finding that the complaint has been properly served and the time within which to answer or other respond has passed and no pleading has been filed and that it is recommended that the Default Judgment enter default judgment;
  - (E) A proposed order granting the motion for judgment by default for signature by the District Court; and
  - (F) A proposed judgment, if applicable, for signature by the District Court.

### Comment

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

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

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



**RULE 7055-1      DEFAULT JUDGMENT**

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

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(b) **Clerk's Entry of Default.** Prior to filing an application for default judgment, the party seeking default judgment shall obtain the Clerk's Entry of Default pursuant to [Fed. R. Bankr. P. 7055](#). For the Clerk to enter a default, the applicant must show by sworn statement ~~by filing an affidavit containing sufficient factual allegations to determine~~ the following:

- (1) The summons and complaint have been timely and properly served on the defaulting party as required by [Fed. R. Bankr. P. 7004](#);
- (2) An accurate and complete certificate of service has been filed. ~~A and a copy of the certificate of service must be attached has been included~~ as an exhibit to the sworn statement in support of the application for the Clerk's Entry of Default ~~affidavit~~;
- (3) The defaulting party is not an infant, an incompetent person, nor in the military service (see comment); and
- (4) The defaulting party has failed to plead or otherwise defend the action.

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

- (1) ~~An affidavit~~ sworn statement of the amount due and the basis for the same;
- (2) A copy of the Clerk's Entry of Default; and
- (3) A proposed judgment for signature by the Clerk.

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

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

- (A) A motion for default judgment;
- (B) ~~A sworn statement affidavit~~ under [Fed. R. Civ. P. 55\(b\)\(2\)](#), made applicable by [Fed. R. Bankr. P. 7055](#);
- (C) A copy of the Clerk's Entry of Default;

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- (D) ~~An affidavit~~ sworn statement of amount due including a statement of the damages being requested and the basis for them;
  - (E) A proposed order granting the motion for judgment by default;
  - (F) A proposed judgment, if applicable, for signature by the Court; and
  - (G) If the party against whom a default judgment is sought has appeared in the proceeding or is the debtor, an affidavit of service indicating notice of the motion was provided to the defaulting party as required by [Fed. R. Bankr. P. 9014](#).
- (2) **Non-Core Proceeding.** Where the adversary proceeding is a non-core proceeding, plaintiff may seek a Recommendation from the Court to the District Court that a default judgment be entered by filing the following:
- (A) ~~An sworn statement affidavit~~ under [Fed. R. Civ. P. 55\(b\)\(2\)](#), made applicable by [Fed. R. Bankr. P. 7055](#);
  - (B) A copy of the Clerk's Entry of Default;
  - (C) ~~An sworn statement affidavit~~ of amount due including a statement of the damages being requested and the basis for them;
  - (D) A proposed order transmitting record to District Court, combined with the finding that the complaint has been properly served and the time within which to answer or other respond has passed and no pleading has been filed and that it is recommended that the Default Judgment enter default judgment;
  - (E) A proposed order granting the motion for judgment by default for signature by the District Court; and
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### Comment

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

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

<https://scra.dmdc.osd.mil>

## **RULE 9013-1      MOTION PRACTICE**

- (a) **Notice.** Unless otherwise ordered by the Court, notice of a motion shall be provided in the time and manner prescribed by the [Federal Rules of Bankruptcy Procedure](#), Local Bankruptcy Rules, and the [Administrative Procedures](#).
- (1) **Identification of Hearing Date, Time, and Location.** The date, time, and location of the hearing shall be included in the body of the notice of motion and above the case number in the caption.
- (2) **Identification of Relief Sought and Statutory Basis.** The notice of motion shall set forth, in concise, plain terms, the specific relief sought, the party or parties against whom such relief is sought, and the rule or statute upon which the motion or application is predicated. Failure to provide the basis for relief sought is cause for the Court to deny the relief requested.
- (b) **Notice and Service Generally.** When a notice, motion or other paper is electronically filed, the CM/ECF system generates a “Notice of Electronic Filing” that is transmitted to the filing party and all registered users of the CM/ECF system having appeared in the case in which the filing is made.
- (1) **Service Upon a Registered User Who Has Appeared in the Case.** Transmission of the Notice of Electronic Filing to a registered user via the CM/ECF system, constitutes service of the notice, motion or other paper.
- (2) **Service Upon a Non-Registered User or a Registered User Who Has Not Appeared in the Case.** A party who is not a registered user of the CM/ECF system must be served with the filed notice, motion or other paper in compliance with the [Federal Rules of Bankruptcy Procedure](#) and these rules.
- (c) **Certificate of Service.** A certificate of service upon both registered and non-registered users of the CM/ECF system is required. The certificate must state the manner in which service or notice was accomplished on each party. The moving party shall file a certificate of service, not later than seven (7) days prior to the return date of the motion. Failure to file a certificate of service may result in the motion not appearing on the Court's calendar. Sample language for a certificate of service can be found in the [Administrative Procedures](#).
- (d) **Supporting Affidavit, Application, and Exhibits.**
- (1) **Service Not Required.** Except as provided in the subparagraphs below, where a motion is made for the relief set forth in subparagraphs (a)(1), (2), (3), and (5) of [LBR 2002-1](#) and the relief sought and the affected parties are clearly and unambiguously stated in the notice of motion, a supporting affidavit, application, or exhibits need not be served on all parties in interest. In such case, the notice of motion must clearly indicate that a copy of the supporting affidavit, application, or exhibit is available, without charge, from the movant upon request. The movant

must provide a contact name and telephone number and/or email address to which such a request may be made.

- (2) **Service Required.** A complete copy of a motion with any supporting affidavit, application, and exhibits shall be served upon the United States trustee, the trustee, any official committee, opposing counsel, and any party that may be directly adversely affected by the granting of the requested relief.
  - (3) **Filing Requirements.** Any motion, supporting affidavit, and application must be filed with the Court. For filing requirements related to exhibits, see [LBR 9013-2](#).
- (e) **Timeliness of Filing and Service of a Motion.** Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly [Rules 2002](#), [3007](#), and [4007](#)), these rules, the [Administrative Procedures](#), or as ordered by the Court, any motion shall be filed and served at least twenty-one (21) days before the return date of the motion.
- (f) **Filing Deadlines.** An electronic filing is considered timely if received by the Court before midnight on the date set as a deadline, unless the Court or these rules specifically require an earlier filing.
- (g) **Answering Papers.**
- (1) **Timeliness of Filing and Service.** Answering papers shall be served and filed so as to be received not later than seven (7) days prior to the return date of the motion. The date, time, and location of the hearing shall be included above the case number in the caption.
  - (2) **Form.** Answering papers shall identify the date, time and location of the hearing above the case number in the caption.
  - (3) **Oral Opposition.** If the Court permits oral opposition to a motion without an answer or response being filed and adjourns the hearing, the answer or response substantiating the oral opposition shall be filed and served within seven (7) days of the original hearing date.
- (h) **Chambers Copy.** A paper chambers copy is required for the matters listed below. The chambers copy is to be submitted to the Clerk contemporaneously with the electronic filing of the pleading or other document. The copy must be clearly marked as “ECF CASE – CHAMBERS COPY.” The chambers copy need not contain a copy of the original signature. Unless otherwise directed by the Court, copies should be sent via regular mail or hand delivery, not by facsimile. Parties who fail to provide a chambers copy may be billed for copies.
- (1) **Albany Chambers:**

    - (A) Notice of motion, motion, application, and certificate of service, except for chapter 13 trustee’s motion to dismiss and to determine/expunge claim;

- (B) Opposition, response, or any pleading relating to a hearing;
- (C) Opposition to disclosure statement in a chapter 11 case;
- (D) Objection to confirmation of a chapter 11 plan;
- (E) Pretrial statement;
- (F) Memoranda of law and any pleading and other document filed in regard to a submitted matter; and
- (G) All pleadings related to loss mitigation.

**(2) Syracuse and Utica Chambers:**

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

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

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

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

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

- (l) **Procedure for Notification of Withdrawal.** Notice of the withdrawal of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- (m) **Notification of Settlement – Generally.** Where movant and opposing counsel have agreed to the terms of an order, movant shall provide written notification to the Court and all parties who have filed and served responding papers.
- (n) **Procedure for Notification of Settlement.** Notice of the settlement of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- (o) **Appearance by Local Counsel.** If a party is to be represented by local counsel at a hearing in place of counsel of record, local counsel must be admitted to practice before the District Court of the Northern District of New York and should be fully versed in the matter before the Court.

#### **Comment**

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

## RULE 9013-1 MOTION PRACTICE

- (a) **Notice.** Unless otherwise ordered by the Court, notice of a motion shall be provided in the time and manner prescribed by the [Federal Rules of Bankruptcy Procedure](#), Local Bankruptcy Rules, and the [Administrative Procedures](#).
- (1) **Identification of Hearing Date, Time, and Location.** The date, time, and location of the hearing shall be included in the body of the notice of motion and above the case number in the caption.
  - (2) **Identification of Relief Sought and Statutory Basis.** The notice of motion shall set forth, in concise, plain terms, the specific relief sought, the party or parties against whom such relief is sought, and the rule or statute upon which the motion or application is predicated. Failure to provide the basis for relief sought is cause for the Court to deny the relief requested.
- (b) **Notice and Service Generally of ~~Electronic Filing~~.** When a ~~pleading notice, motion~~ or other ~~paper document~~ is electronically filed, the CM/ECF system generates a “Notice of Electronic Filing” that is transmitted to the filing party and all registered users of the CM/ECF system having appeared in the case in which the filing is made.
- (1) **Service Upon a Registered User Who Has Appeared in the Case.** Transmission of the Notice of Electronic Filing to a registered user via the CM/ECF system, constitutes service of the ~~notice, motion pleading~~ or other ~~paper document~~.
  - (2) **Service Upon a Non-Registered User or a Registered User Who Has Not Appeared in the Case.** A party who is not a registered user of the CM/ECF system must be served with the filed ~~notice, motion pleading~~ or other ~~paper document~~ in compliance with the [Federal Rules of Bankruptcy Procedure](#) and these rules.
- (c) **Certificate of Service.** A certificate of service upon both registered and non-registered users of the CM/ECF system is required. The certificate must state the manner in which service or notice was accomplished on each party. The moving party shall file a certificate of service, not later than seven (7) days prior to the return date of the motion. Failure to file a certificate of service may result in the motion not appearing on the Court's calendar. Sample language for a certificate of service can be found in the [Administrative Procedures](#).
- (d) **Supporting Affidavit, Application, and Exhibits.**
- (1) **Service Not Required.** Except as provided in the subparagraphs below, where a motion is made for the relief set forth in subparagraphs (a)(1), (2), (3), and (5) of [LBR 2002-1](#) and the relief sought and the affected parties are clearly and unambiguously stated in the notice of motion, a supporting affidavit, application, or exhibits need not be served on all parties in interest. In such case, the notice of motion must clearly indicate that a copy of the supporting affidavit, application, or exhibit is available, without charge, from the movant upon request. The movant

must provide a contact name and telephone number and/or email address to which such a request may be made.

- (2) **Service Required.** A complete copy of a motion with any supporting affidavit, application, and exhibits shall be served upon the United States trustee, the trustee, any official committee, opposing counsel, and any party that may be directly adversely affected by the granting of the requested relief.
  - (3) **Filing Requirements.** Any motion, supporting affidavit, and application must be filed with the Court. For filing requirements related to exhibits, see [LBR 9013-2](#).
- (e) **Timeliness of Filing and Service of a Motion.** Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly [Rules 2002](#), [3007](#), and [4007](#)), these rules, the [Administrative Procedures](#), or as ordered by the Court, any motion shall be filed and served at least twenty-one (21) days before the return date of the motion.
- (f) **Filing Deadlines.** An electronic filing is considered timely if received by the Court before midnight on the date set as a deadline, unless the Court or these rules specifically require an earlier filing.
- (g) **Answering Papers.**
- (1) **Timeliness of Filing and Service.** Answering papers shall be served and filed so as to be received not later than seven (7) days prior to the return date of the motion. The date, time, and location of the hearing shall be included above the case number in the caption.
  - (2) **Form.** Answering papers shall identify the date, time and location of the hearing above the case number in the caption.
  - (3) **Oral Opposition.** If the Court permits oral opposition to a motion without an answer or response being filed and adjourns the hearing, the answer or response substantiating the oral opposition shall be filed and served within seven (7) days of the original hearing date.
- (h) **Chambers Copy.** A paper chambers copy is required for the matters listed below. The chambers copy is to be submitted to the Clerk contemporaneously with the electronic filing of the pleading or other document. The copy must be clearly marked as “ECF CASE – CHAMBERS COPY.” The chambers copy need not contain a copy of the original signature. Unless otherwise directed by the Court, copies should be sent via regular mail or hand delivery, not by facsimile. Parties who fail to provide a chambers copy may be billed for copies.
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- (G) All pleadings related to loss mitigation.

**(2) Syracuse and Utica Chambers:**

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

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

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

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

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

- (l) **Procedure for Notification of Withdrawal.** Notice of the withdrawal of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- (m) **Notification of Settlement – Generally.** Where movant and opposing counsel have agreed to the terms of an order, movant shall provide written notification to the Court and all parties who have filed and served responding papers.
- (n) **Procedure for Notification of Settlement.** Notice of the settlement of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- (o) **Appearance by Local Counsel.** If a party is to be represented by local counsel at a hearing in place of counsel of record, **local counsel must be admitted to practice before the District Court of the Northern District of New York and should be, unless the Court directs otherwise, fully versed in the matter before the Court. counsel of record must be available by telephone during the hearing should the Court deem the appearance of primary counsel necessary. Counsel of record must provide contact information to local counsel prior to the hearing. If the motion is not resolved and the hearing is adjourned, local counsel shall file a Notice of Local Counsel within two business days of the hearing. Unless the Court directs otherwise, local counsel must be fully versed in the matter before the Court.**

### Comment

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

**RULE 9037-1      PRIVACY PROTECTION - REDACTION OF A PERSONAL IDENTIFIER**

- (a) **Personal Identifier.** Unless otherwise ordered by the Court, in an electronic or paper filing made with the Court that contains an individual’s social security number, taxpayer identification number, or birth date, the name of an individual, other than the debtor known to be and identified as a minor, or a financial-account number (individually and collectively referred to as “Personal Identifier”), a party or nonparty making the filing may include only:
- (1) The last four (4) digits of the social security number and taxpayer identification number;
  - (2) The year of the individual’s birth;
  - (3) The minor’s initials; and
  - (4) The last four digits of the financial account number.
- (b) **Responsibility for Redaction.** As noted in [Fed. R. Bankr. P. 9037](#), responsibility for redacting a Personal Identifier in a pleading or other document filed with the Court rests solely with counsel and unrepresented parties filing such pleadings or other documents. The Clerk will not review each pleading or other document for compliance with [Fed. R. Bankr. P. 9037](#) and this Rule and absent a request, as provided in paragraph (c), will not redact a Personal Identifier, erroneously including in a filing.
- (c) **Request for Redaction of Personal Identifier.** A request for the redaction of a Personal Identifier should be made by electronically filing an application for an Order Directing Clerk to (i) Restrict Document(s) from Public Access and (ii) Substitute Redacted Document(s). The redacted document(s) should be filed as an exhibit to the application. Notice of the application must be given in compliance with Fed. R. Bankr. P. 9037. The applicant should then upload as an E-Order the proposed order that grants the application.
- (d) **Sanctions.** The Court may impose sanctions on counsel or any party who files a pleading or other document containing a Personal Identifier in violation of [Fed. R. Bankr. P. 9037](#).

**Comment**

On occasion counsel or parties may have the need to file multiple requests for redaction of personal identifiers. Counsel or parties should contact the Clerk’s office prior to filing the requests for redaction.

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- (c) **Request for Redaction of Personal Identifier.** A request for the redaction of a Personal Identifier should be made by electronically filing an ~~ex parte~~ application for an Order Directing Clerk to (i) Restrict Document(s) from Public Access and (ii) Substitute Redacted Document(s). The redacted document(s) should be filed as an exhibit to the application. **Notice of the application must be given in compliance with Fed. R. Bankr. P. 9037.** The applicant should then upload as an E-Order the proposed order that grants the application.
- (d) **Sanctions.** The Court may impose sanctions on counsel or any party who files a pleading or other document containing a Personal Identifier in violation of [Fed. R. Bankr. P. 9037](#).

**Comment**

On occasion counsel or parties may have the need to file multiple requests for redaction of personal identifiers. Counsel or parties should contact the Clerk’s office prior to filing the requests for redaction.