

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In the matter:	X
	X
	X
ADOPTION OF LOCAL BANKRUPTCY RULES	X
	X
	X
	X

The Bankruptcy Judges having considered the report of the Committee to Draft Local Bankruptcy Rules (the “Committee”); and public notice and opportunity to comment having been had; and it appearing that the Proposed Local Bankruptcy Rules submitted by the Committee are acceptable to the Bankruptcy Judges of the District and that pursuant to Bankruptcy Rule 9029 and Federal Rules of Civil Procedure 83, they should be adopted,

NOW, it is

ORDERED, that the annexed Local Bankruptcy Rules be, and the same hereby are, adopted, effective July 28, 1998.

Dated: New York, New York
July 28, 1998

/s/ Tina L. Brozman

Tina L. Brozman
Chief Bankruptcy Judge

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

**PART I COMMENCEMENT OF CASE; PROCEEDINGS RELATING
TO PETITION AND ORDER FOR RELIEF**

Rule 1001-1 SHORT TITLE; APPLICABILITY

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

(b) *Applicability.*

(1) The Local Bankruptcy Rules shall apply to all cases in this district governed by the Bankruptcy Code.

(2) Rules 1 through 35 and 63 through 82 of the Former Local Bankruptcy Rules shall apply to all cases in this district governed by the Bankruptcy Act.

Comment

This rule is derived from Former Local Bankruptcy Rule 1.

Pursuant to Bankruptcy Rule 9029, "[e]ach district court . . . may make and amend rules governing practice and procedure . . . which are not inconsistent with" the Bankruptcy Rules and "[i]n all cases not provided for by rule, the court may regulate its practice in any manner not inconsistent with" the Bankruptcy Rules. The Judges of this district have been authorized to make and amend rules of practice and procedure pursuant to an order of the District Court (Griesa, C.J.), dated December 1, 1994.

Pursuant to the Memorandum of the Administrative Office of the United States Courts, dated November 22, 1994, the appropriate citation form for a local bankruptcy rule, using the uniform numbers, is "LBR ____." For example, this rule would be cited as "LBR 1001-1." In a brief or other document in which the district prescribing the rule must be identified, this rule would be cited as "S.D.N.Y. LBR 1001-1."

Except with respect to cases under the Bankruptcy Act, these Local Bankruptcy Rules supersede the Former Local Bankruptcy Rules.

From time to time, the Court may issue standing orders to supplement these Local Bankruptcy Rules, copies of which may be obtained from the Clerk.

Capitalized terms used in these Local Bankruptcy Rules are defined in Local Bankruptcy Rule 9001-1.

Rule 1002-1 FILING OF PETITION

A petition commencing a case under the Bankruptcy Code may be filed in any office of the Clerk or by electronic means established by the Court.

Comment

This rule is derived from Former Local Bankruptcy Rule 9(a).

Local Bankruptcy Rule 5005-2 permits filing by electronic means to the extent permitted by any standing orders issued by the Court, copies of which may be obtained from the Clerk.

Rule 1005-1 DEBTOR'S ADDRESS IN PETITION

If not included in the debtor's post office address, the petition also shall state the debtor's residence and place of business, including the street number, street, apartment or suite number, and zip code.

Comment

This rule is derived from Former Local Bankruptcy Rule 50(a).

Rule 1007-1 LIST OF CREDITORS AND EQUITY SECURITY HOLDERS

A person filing any lists, schedules, or statements pursuant to Bankruptcy Rule 1007 shall comply with such filing requirements as are contained in any standing order issued by the Court.

Comment

This rule contemplates that filing requirements with respect to lists, statements, and schedules will be governed by standing orders of the Court, copies of which may be obtained from the Clerk.

**Rule 1007-2 DEBTOR'S AFFIDAVIT AND PROPOSED CASE CONFERENCE
ORDER TO BE FILED IN CHAPTER 11 CASES**

(a) *Contents of Affidavit.* A debtor in a chapter 11 case shall file an affidavit setting forth:

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

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

(3) the names and addresses of the members of, and attorneys for, any committee organized prior to the order for relief in the chapter 11 case, and a brief description of the circumstances surrounding the formation of the committee and the date of its formation;

(4) the following information with respect to each of the holders of the 20 largest unsecured claims, excluding insiders: the name, the address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), the telephone number, the name(s) of person(s) familiar with the debtor's account, the amount of the claim, and an indication of whether the claim is contingent, unliquidated, disputed, or partially secured;

(5) the following information with respect to each of the holders of the five largest secured claims: the name, the address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), the amount of the claim, a brief description and an estimate of the value of the collateral securing the claim, and whether the claim or lien is disputed;

(6) a summary of the debtor's assets and liabilities;

(7) the number and classes of shares of stock, debentures, or other securities of the debtor that are publicly held, and the number of holders thereof, listing separately those held by each of the debtor's officers and directors and the amounts so held;

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

(9) a list of the premises owned, leased, or held under other arrangement from which the debtor operates its business;

(10) the location of the debtor's substantial assets, the location of its books and records, and the nature, location, and value of any assets held by the debtor outside the territorial limits of the United States;

(11) the nature and present status of each action or proceeding, pending or threatened, against the debtor or its property where a judgment against the debtor or a seizure of its property may be imminent; and

(12) the names of the individuals who comprise the debtor's existing senior management, their tenure with the debtor, and a brief summary of their relevant responsibilities and experience.

(b) *Additional Information if Business Is to Continue.* If the debtor intends to continue to operate its business, the affidavit shall so state and set forth:

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

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

(A) if the debtor is a corporation, to officers, stockholders, and directors;

(B) if the debtor is an individual or a partnership, to the individual or the members of the partnership; and

(C) if a financial or business consultant has been retained by the debtor, to the consultant; and

(3) a schedule, for the 30 day period following the filing of the chapter 11 petition, of estimated cash receipts and disbursements, net cash gain or loss, obligations and receivables expected to accrue but remain unpaid, other than professional fees, and any other information relevant to an understanding of the foregoing.

(c) *When to File.* In a voluntary chapter 11 case, the affidavit shall accompany the petition. In an involuntary chapter 11 case, the affidavit shall be filed within 15 days after the date on which (i) the order for relief is entered, or (ii) a consent to the petition is filed.

(d) *Waiver of Requirements.* Upon motion of the debtor on notice to the United States Trustee showing that it is impracticable or impossible to furnish any of the foregoing information, the Court may dispense with any of the foregoing provisions, with the exception of those contained in paragraphs (1), (2), (3), and (4) of subdivision (a) of this rule.

(e) *Proposed Case Conference Order.* There shall be submitted to the Court with the chapter 11 petition a proposed case conference order in the following form. Any initial conference shall be conducted approximately 30 days after the filing of the petition or at such other time as the Court may direct.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
:
[Caption of Case] : Chapter 11 Case No. _____
:
:
-----X

ORDER SCHEDULING INITIAL CASE CONFERENCE

[INSERT NAME OF DEBTOR] (the "Debtor ") having filed a petition for reorganization under chapter 11 of the Bankruptcy Code on [date], and the Court having determined that a case management conference will aid in the efficient conduct of the case, it is

ORDERED, pursuant to 11 U.S.C. § 105(d), that an initial case management conference will be conducted by the undersigned Bankruptcy Judge in Room ____, United States Bankruptcy Court, One Bowling Green, New York, New York 10004 on _____, ____, at _: __ __.m., or as soon thereafter as counsel may be heard, to consider the efficient administration of the case, which may include, *inter alia*, such topics as retention of professionals, creation of a committee to review budget and fee requests, use of alternative dispute resolution, timetables, and scheduling of additional case management conferences; and it is further

ORDERED, that the Debtor shall give notice by mail of this order at least seven days prior to the scheduled conference to each committee appointed to serve in the case pursuant to 11 U.S.C. § 1102 (or, if no committee has been appointed, to the holders of the 10 largest unsecured claims), the holders of the five largest secured claims, any postpetition lender to the Debtor, and the

United States Trustee, and shall promptly file proof of service of such notice with the Clerk of the Court.

Dated: _____, New York
_____ , _____

UNITED STATES BANKRUPTCY JUDGE

Comment

This rule is derived from Former Local Bankruptcy Rule 52, with the exception of subdivisions (a)(5) and (a)(11), which are derived from former Standing Order M-147.

Subdivision (e) of this rule, added in 1996, is intended to aid in the implementation of Local Bankruptcy Rule 9076-1.

Rule 1009-1 NOTICE OF AMENDMENT OF SCHEDULES IN CHAPTER 11 CASES

Whenever the debtor or trustee in a chapter 11 case amends the debtor's schedules to change the amount, nature, classification, or characterization of a debt owing to a creditor, the debtor or trustee promptly shall transmit notice of the amendment to the creditor.

Comment

This rule is derived from Former Local Bankruptcy Rule 53.

The term "characterization," as used in this rule, includes a description of whether the debt is disputed or undisputed, fixed or contingent, and liquidated or unliquidated.

Rule 1014-1 TRANSFER OF CASES

Unless the Court orders otherwise, whenever a case is ordered transferred from this district, the Clerk, promptly after entry of the order, shall transmit to the court to which the case is transferred (i) certified copies of the opinion ordering the transfer, the order thereon, and the case docket, and (ii) the originals of all other papers on file in the case.

Comment

This rule is derived from Former Local Bankruptcy Rule 7 and is an adaptation of Civil Rule 83.1 of the Local District Rules.

Although not expressly stated, this rule contemplates that whenever transfer of a case under the Bankruptcy Code is ordered by a District Judge, the District Clerk will transmit the order and related documents to the Clerk of the Bankruptcy Court.

Transfers of adversary proceedings are governed by Local Bankruptcy Rule 7087-1.

Rule 1020-1 SMALL BUSINESS ELECTION

If a debtor files a written statement of election to be considered a small business, a copy of the statement shall be mailed to all creditors and equity security holders and to the United States Trustee.

Comment

This rule is new and complements §§ 1102 and 1125 of the Bankruptcy Code and Bankruptcy Rule 1020.

Rule 1073-1 ASSIGNMENT OF CASES AND PROCEEDINGS

(a) *Cases.* Where the mailing address of the debtor set forth on the petition is in New York County or Bronx County, the Clerk shall assign the case to a Judge sitting in New York County; where the mailing address is in Rockland County or Westchester County, the Clerk shall assign the case to a Judge sitting in Westchester County; and where the mailing address is in Dutchess County, Orange County, Putnam County, or Sullivan County, the Clerk shall assign the case to a Judge sitting in Dutchess County. Where more than one Judge is sitting in a county, cases, other than chapter 13 cases, shall be assigned by random selection so that each Judge shall be assigned approximately the same number of cases. The Judges may direct that chapter 13 cases be referred to the same Judge or Judges. The Clerk shall have no discretion in determining the Judge to whom any case is assigned; the action shall be solely ministerial.

(b) *Related Cases.* Related cases, including cases involving affiliates, shall be assigned to the same Judge.

(c) *Proceedings.* Except as otherwise provided in the Bankruptcy Code or Bankruptcy Rules, the assignment of a case to a Judge includes the assignment of all proceedings arising under title 11 or arising in, or related to, a case under title 11.

(d) *Removed Actions.* A removed action that does not arise out of a case pending in this Court shall be deemed to have venue in the county in which the court from which it was removed is situated and be assigned to a Judge in the manner provided in subdivision (a) of this rule.

(e) *Adversary Proceedings or Contested Matters in Cases Pending Outside of this Court.* An adversary proceeding or contested matter that does not arise out of a case pending in

this Court shall be designated by the Clerk to an office of the Clerk in New York County, Westchester County, or Dutchess County. In making the designation, the Clerk shall take into consideration the residence of the defendant, the convenience of litigants, counsel, and witnesses, and the place where the cause of action arose. Unless the Court orders otherwise, the county designated by the Clerk shall be the place of trial and all other proceedings. The designation shall be made at the time of commencement or transfer of the adversary proceeding or contested matter, and the Clerk shall give prompt notice thereof to the parties or their counsel. After the designation, the adversary proceeding or contested matter shall be assigned to a Judge in the manner provided in subdivision (a) of this rule. Objections, if any, to the designation shall be made, on notice to opposing counsel, before the Judge to whom the adversary proceeding or contested matter has been assigned.

(f) *Assignments and Reassignments.* The Chief Judge shall supervise and rule upon all assignments and reassignments of cases, adversary proceedings, contested matters, and actions.

Comment

This rule is derived from Former Local Bankruptcy Rule 5.

Rule 1074-1 CORPORATE RESOLUTION; PARTNERSHIP STATEMENT

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

(b) *Partnership Statement.* A voluntary petition filed by, or consent to an involuntary petition filed on behalf of, a partnership shall be accompanied by a duly attested statement that all partners whose consent is required for the filing have consented.

Comment

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 51. Subdivision (b) of this rule was added in 1996.

**PART II OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS;
EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS**

Rule 2002-1 NOTICE TO UNITED STATES TRUSTEE

Unless the case is a chapter 9 case or the United States Trustee requests otherwise, any notice required to be given to creditors under Bankruptcy Rule 2002 also shall be given to the United States Trustee.

Comment

This rule is derived from Former Local Bankruptcy Rule 36.

**Rule 2002-2 NOTICE OF PROPOSED ACTION OR ORDER WHEN NOT
PROCEEDING BY MOTION**

(a) *Contents of Notice.* Unless the Court orders otherwise, whenever "notice and a hearing" are specified in the Bankruptcy Code or Bankruptcy Rules but a motion is not mandatory, the entity proposing to act or obtain an order, in lieu of proceeding by motion, may give written notice, which, together with proof of service, shall be filed with the Clerk with a copy delivered to the Judge's chambers, setting forth:

(1) a statement of the action proposed to be taken or the order to be presented, including a concise statement of the terms and conditions of, and the reasons for, the proposed action or order;

(2) the date by which objections or responses to the proposed action or order shall be served and filed;

(3) the date and time when the action will be taken or the proposed order will be presented for signature if there is no objection, and a statement that the action will be taken or the order may be entered without a hearing unless a timely objection is made; and

(4) the date on which a hearing will be held if a timely objection is made, which date shall be obtained in the manner provided by Local Bankruptcy Rule 5070-1.

(b) *Time for Notice.* Unless the Court orders otherwise, if notice is to be given to all creditors under subdivision (a) of this rule, the notice shall be given at least 20 days prior to the date on which the proposed action is to be taken or the proposed order is to be presented. If the Court issues an order requiring that notice be given to fewer than all creditors, the notice shall be given at least seven days prior to such date.

(c) *Entities to Receive Notice.* Unless the Court orders otherwise, in addition to the requirements of Bankruptcy Rule 2002 and Local Bankruptcy Rule 2002-1, notice under subdivision (a) of this rule shall be given to any entity having or claiming an interest in the subject matter of the proposed action or order or who otherwise would be affected by the proposed action or order.

(d) *Objection.* Unless the Court orders otherwise, any objection to the proposed action or order shall be in writing, state with particularity the reasons for the objection, and be served on the party proposing the action or order so as to be received (i) at least three days prior to the date set for the hearing if at least 20 days' notice has been given and (ii) at least one day prior to the date set for the hearing if at least 7 (but less than 20) days' notice has been given. The objection, together with proof of service, shall be filed with the Clerk and a copy thereof shall be delivered to the Judge's chambers prior to the date set for the hearing.

Comment

This rule is derived from Former Local Bankruptcy Rule 45.

This rule provides a standard procedure that may be used whenever the Bankruptcy Code requires "notice and a hearing," including, without limitation, §§ 363, 364, 554, and 725 of the Bankruptcy Code, where the entity proposing to act or obtain an order is not required, and does not intend, to proceed by motion.

The "notice and a hearing" requirements concerning the use, sale, or lease of property and the abandonment or other disposition of property are governed by Bankruptcy Rules 6004 and 6007, respectively. To the extent not inconsistent with those Bankruptcy Rules, this rule shall apply.

Other procedures for the submission of orders are provided for by Local Bankruptcy Rule 9074-1.

Local Bankruptcy Rule 9078-1 governs the filing of proofs of service of notices.

Rule 2007.1-1 ELECTION OF TRUSTEE IN CHAPTER 11 CASES

A meeting of creditors convened for the purpose of electing a chapter 11 trustee pursuant to § 1104(b) of the Bankruptcy Code shall be deemed a meeting of creditors under § 341 of the Bankruptcy Code.

Comment

This rule clarifies that a meeting convened for the purpose of electing a chapter 11 trustee pursuant to § 1104(b) of the Bankruptcy Code satisfies the requirement of § 702(b) of the Bankruptcy Code that a trustee be elected at a meeting of creditors held under § 341 of the Bankruptcy Code.

Rule 2014-1 EMPLOYMENT OF PROFESSIONAL PERSONS

An application for the employment of a professional person pursuant to §§ 327 and 328 of the Bankruptcy Code shall state the specific facts showing the reasonableness of the terms and conditions of the employment, including the terms of any retainer, hourly fee, or contingent fee arrangement.

Comment

This rule is derived from Former Local Bankruptcy Rule 39.

The information required by Bankruptcy Rule 2014(a) and this rule may be contained in the same application.

Rule 2015-1 STORAGE OF BOOKS AND RECORDS

The trustee or debtor in possession may place in storage, at the expense of the estate, the debtor's books, records, and papers.

Comment

This rule is derived from Former Local Bankruptcy Rule 43.

This rule sets no time limit on the storage of books and records. On request, the Court may issue an appropriate order limiting storage of the debtor's books, records, and papers. Disposal of the debtor's books, records, and papers is governed by §§ 363 and 554 of the Bankruptcy Code.

Rule 2016-1**COMPENSATION OF PROFESSIONALS**

A person seeking an award of compensation or reimbursement of expenses shall comply with the requirements contained in any guidelines for fees and disbursements promulgated by the Court.

Comment

Guidelines for fees and disbursements are governed by one or more standing orders of the Court, copies of which may be obtained from the Clerk.

Rule 2016-2**COMPENSATION OR REIMBURSEMENT OF EXPENSES IN CHAPTER 7 CASES**

Unless the Court orders otherwise, a person seeking an award of compensation or reimbursement of expenses in a chapter 7 case shall file an application with the Clerk and serve a copy on the trustee and the United States Trustee not later than 20 days prior to the date of the hearing on the trustee's final account. Failure to file and serve an application within the time prescribed by this rule may result in its disallowance. Unless the Court orders otherwise, the United States Trustee shall file any objection to such application at least two business days prior to the date of the hearing.

Comment

This rule is derived from former Standing Order M-90.

This rule supplements Local Bankruptcy Rule 2016-1 and facilitates the expeditious closing of chapter 7 cases. Pursuant to Local Bankruptcy Rule 5009-1, the trustee is obligated to set forth the language contained in this rule, or words of similar import, on the notice of filing of a final account.

Rule 2090-1**ADMISSION TO PRACTICE; WITHDRAWAL AS ATTORNEY OF RECORD**

(a) *General.* An attorney who may practice in the District Court pursuant to Civil Rule 1.3(a) and (b) of the Local District Rules may practice in this Court.

(b) *Pro Hac Vice.* Upon motion to the Court, a member in good standing of the bar of any state or of any United States District Court may be permitted to practice in this Court in a particular case, adversary proceeding, or contested matter.

(c) *Local Address for Service.* Unless the Court orders otherwise, an attorney of record representing a debtor or petitioning creditors who is permitted to practice in the Court and who does not have an office within the Southern District or Eastern District of New York shall designate, together with the attorney's initial notice or pleading, a member of the bar of either district having an office within the Southern District or Eastern District of New York upon whom service of papers may be made.

(d) *Pro Se Designation of Address.* An individual appearing *pro se* shall include the individual's residence address and telephone number in the individual's initial notice or pleading. Unless the Court orders otherwise, an individual appearing *pro se* who is not a resident of the Southern District or Eastern District of New York shall designate a mailing address within the Southern District or Eastern District of New York.

(e) *Withdrawal as Attorney of Record.* An attorney who has appeared as attorney of record may withdraw or be replaced only by order of the Court for cause shown.

(f) *Exceptions.* This rule shall not apply to (i) the filing of a proof of claim or interest, or (ii) an appearance by a child support creditor or such creditor's representative.

Comment

Subdivisions (a) and (b) of this rule are derived from Former Local Bankruptcy Rule 3. Subdivisions (c), (d), (e), and (f)(i) of this rule are derived from Former Local Bankruptcy Rule 4 and are an adaptation of Civil Rules 1.3(c), (d), and 1.4 of the Local District Rules. Subdivision (f)(ii) of this rule, added in 1996, is derived from § 304(g) of the Bankruptcy Reform Act of 1994, which permits child support creditors or their representatives to appear and intervene without charge and without meeting any special local court rule requirements for attorney appearances.

Subdivision (a) of this rule contains a technical change to reflect a renumbering of the applicable Local District Rule.

PART III CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3008-1 RECONSIDERATION OF CLAIMS

No oral argument shall be heard on a motion to reconsider an order of allowance or disallowance of a claim unless the Court grants the motion and specifically orders that the matter be reconsidered upon oral argument. If a motion to reconsider is granted, notice and a hearing shall be afforded to parties in interest before the previous action taken with respect to the claim may be vacated or modified.

Comment

This rule, added in 1996, is derived from the Advisory Committee Note to Bankruptcy Rule 3008 and Former Local Bankruptcy Rule 13(i).

Rule 3015-1 CHAPTER 13 PLANS: PAYMENTS EXCEEDING THREE YEARS; TREATMENT OF DEBTOR'S ATTORNEY'S FEES AS ADMINISTRATIVE EXPENSE; SERVICE

(a) *Payments Exceeding Three Years.* If a chapter 13 plan proposes payments to creditors over a period exceeding three years, then not later than 10 days prior to the date fixed for the hearing on confirmation of the plan, the debtor shall file an application on notice to the trustee, the United States Trustee, and all creditors setting forth the reasons for the longer period of time. If the debtor files both a plan and an application to extend the three year period contemporaneously with the filing of the chapter 13 petition, the debtor shall serve the application upon the trustee and the United States Trustee, but shall be relieved of the obligation of serving it upon all creditors. In such instance, the Clerk shall effectuate service by including the following language, or words of similar import, in the Notice of Commencement of Case that it serves upon all creditors:

An application has been made to extend payments under the debtor's chapter 13 plan over a period that is longer than three years. Such application may be granted unless an objection is filed not later than 15 days before the date set for the hearing on confirmation of the plan. A copy of the application is available in the Clerk's Office at the Court. If an objection is filed, a hearing shall be held on the date and at the time set for the confirmation hearing.

(b) *Notice and Hearing for Attorney's Fees to be Treated as Administrative Expense.* If the compensation, or any portion thereof, of the attorney for a chapter 13 debtor is to be

treated as an administrative expense under the plan, the attorney shall provide adequate notice of that fact to the trustee, the United States Trustee, and all creditors. The notice shall be deemed adequate if the plan, or a summary of the plan, is transmitted timely to all parties in interest and states with particularity the timing and amount of any payments to be made to the attorney.

(c) *Service of Plan.* If the notice of commencement of a chapter 13 case is served without a copy of the plan or a summary of the plan, the debtor shall serve the plan or a summary of the plan on the chapter 13 trustee and all creditors.

Comment

The first sentence of subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 61; the balance of the subdivision is new. Subdivision (a) contemplates that in a chapter 13 case, the Clerk will provide notice of a debtor's application to extend the three year plan payment period pursuant to § 1322(d) of the Bankruptcy Code, provided that the debtor has filed both a plan and an application to extend the three year payment period contemporaneously with the filing of the chapter 13 petition. If the debtor does not file both a plan and such application together with the petition, then the debtor, rather than the Clerk, shall be responsible for serving notice of the application. This rule is intended to (i) encourage chapter 13 debtors to file their plans simultaneously with their petitions and (ii) avoid waste and promote judicial economy.

Rule 3015-2 MODIFICATION OF CHAPTER 13 PLAN BEFORE CONFIRMATION

If the debtor seeks to modify a chapter 13 plan prior to confirmation, the debtor shall serve a copy of the modified plan on the chapter 13 trustee, the United States Trustee, and such creditors as the Court may direct.

Comment

This rule is derived from Former Local Bankruptcy Rule 60 and supplements § 1323 of the Bankruptcy Code.

Rule 3015-3 HEARING ON CONFIRMATION OF CHAPTER 13 PLAN

The debtor shall attend the hearing on confirmation of the chapter 13 plan, unless the Court, upon application of the debtor on such notice as the Court directs, and for cause shown, orders otherwise.

Comment

This rule is derived from Former Local Bankruptcy Rule 59.

Rule 3017-1 PROPOSED DISCLOSURE STATEMENTS IN CHAPTER 9 AND CHAPTER 11 CASES: TRANSMITTAL AND DISCLAIMER

(a) *Transmittal.* Unless the Court orders otherwise, the proponent of a plan shall transmit all notices and documents required to be transmitted by Bankruptcy Rule 3017(a). Upon request, the Clerk shall supply the proponent, at a reasonable cost, with any available matrix of creditors for the purpose of preparing address labels.

(b) *Disclaimer Other Than in Small Business Cases.* Except in a case where the debtor has elected to be considered a small business, before a proposed disclosure statement has been approved by the Court, the proposed disclosure statement shall have on its cover, in boldface type, the following language, or words of similar import:

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

(c) *Disclaimer in Small Business Cases.* In a case where the debtor has elected to be considered a small business, after conditional approval but before final approval of a proposed disclosure statement has been given, the proposed disclosure statement shall have on its cover, in boldface type, the following language, or words of similar import:

THE DEBTOR IN THIS CASE HAS ELECTED TO BE CONSIDERED A SMALL BUSINESS. AS A RESULT, THE DEBTOR IS PERMITTED TO DISTRIBUTE AND HAS DISTRIBUTED THIS DISCLOSURE STATEMENT BEFORE ITS FINAL APPROVAL BY THE COURT. IF AN OBJECTION TO THIS DISCLOSURE STATEMENT IS FILED BY A PARTY IN INTEREST, FINAL APPROVAL OF THIS DISCLOSURE STATEMENT WILL BE CONSIDERED AT OR BEFORE THE HEARING ON CONFIRMATION OF THE PLAN.

Comment

Subdivisions (a) and (b) of this rule are derived from Former Local Bankruptcy Rule 55. Subdivision (c) of this rule, added in 1996, is derived from § 217 of the Bankruptcy Reform Act of 1994.

Bankruptcy Rule 3017(a) provides that the plan and the disclosure statement shall be mailed with the notice of the hearing to the debtor, the trustee, each committee, the Securities and Exchange Commission, the United States Trustee, and any party in interest who requests in writing a copy of the disclosure statement or plan.

Bankruptcy Rule 2002(b) permits the Court to require a party other than the Clerk to bear the responsibility for transmitting the notices and documents specified in this rule.

The reasonable cost, if any, provided for in subdivision (a) of this rule is the fee prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b).

Rule 3018-1 CERTIFICATION OF ACCEPTANCE OR REJECTION OF PLANS IN CHAPTER 9 AND CHAPTER 11 CASES

(a) *Certification of Vote.* At least five days prior to the hearing on confirmation of a chapter 9 or chapter 11 plan, the proponent of a plan or the party authorized to receive the acceptances and rejections of the plan shall certify to the Court in writing the amount and number of allowed claims or allowed interests of each class accepting or rejecting the plan. A copy of the certification shall be served upon the debtor, the trustee, each committee, and the United States

Trustee. The Court may find that the plan has been accepted or rejected on the basis of the certification.

(b) *Notice of Ineffective Election.* If a plan in a chapter 9 or chapter 11 case permits the holder of a claim or interest to make an election with respect to the treatment of the claim or interest, and for any reason the holder's election is deemed ineffective or otherwise is not counted by the person authorized to tabulate ballots, that person shall give notice of that fact to the holder at least five days prior to the hearing on confirmation.

Comment

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 54 and is intended to permit the Court to rely on a certification in determining whether a plan has been accepted or rejected under § 1126 of the Bankruptcy Code. If an issue has been raised with respect to the acceptance or rejection of a plan, the Court may hold an evidentiary hearing. Where acceptances or rejections of a plan of reorganization have been solicited prior to the commencement of the case, the certification may be filed together with the petition.

Subdivision (b) of this rule, added in 1996, is intended to enable a creditor or interest holder who has the right to elect the treatment of its claim or interest on a ballot to be notified if its ballot was not counted or was rejected, and therefore that its election may not be effective.

Rule 3018-2 ACCEPTANCES OR REJECTIONS OF PLAN OBTAINED BEFORE PETITION IN CHAPTER 9 AND CHAPTER 11 CASES

A party seeking to obtain confirmation of any plan proposed and accepted before the commencement of a chapter 9 or chapter 11 case shall comply with the procedures contained in any standing order issued by the Court.

Comment

This rule is new and contemplates that procedures with respect to prepackaged chapter 9 and chapter 11 plans may be governed by standing orders of the Court, copies of which may be obtained from the Clerk.

Rule 3019-1**MODIFICATION OF CHAPTER 11 PLAN BEFORE CLOSE OF VOTING**

If the proponent of a chapter 11 plan files a modification of the plan after transmission of the approved disclosure statement and before the close of voting on the plan, the proponent shall serve a copy of the plan, as modified, upon the debtor, the trustee, each committee, the United States Trustee, all entities directly affected by the proposed modification, and such other entities as the Court may direct. On notice to such entities, the Court shall

determine whether the modification adversely affects the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted the modification in writing. If the Court determines that the modification is not adverse, the plan, as modified, shall be deemed accepted by all creditors and equity security holders who accepted the plan prior to modification. If the modification is adverse, the requirements of Bankruptcy Rule 3017 shall apply to the modified plan and any amendment of the disclosure statement necessitated by the modification.

Comment

This rule is derived from Former Local Bankruptcy Rule 56.

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

Rule 3020-1**TIME FOR OBJECTING TO CONFIRMATION IN CHAPTER 9 AND CHAPTER 11 CASES; WITHDRAWAL OF OBJECTIONS**

(a) *Objections to Confirmation.* Unless the Court orders otherwise, objections to confirmation of a plan shall be filed not later than three days prior to the first date set for the hearing to consider confirmation of the plan.

(b) *Withdrawal of Objections.* In the event of the withdrawal of an objection to confirmation of a plan or the failure to prosecute an objection, the plan shall not be confirmed unless the proponent has disclosed to the Court the terms of any agreement reached between the proponent and the objecting party resulting in the withdrawal or failure to prosecute.

Comment

This rule is derived from Former Local Bankruptcy Rule 57.

Subdivision (a) of this rule designates a fixed time for objecting to confirmation as permitted by Bankruptcy Rule 3020(b)(1).

Subdivision (b) of this rule requires disclosure of the circumstances surrounding the withdrawal of, or failure to prosecute, any objections to confirmation. The purpose of this rule is to allow the Court to determine the propriety of any agreement between the proponent and an objecting party that results in the withdrawal of, or failure to prosecute, an objection.

Rule 3021-1 POSTCONFIRMATION REQUIREMENTS IN CHAPTER 11 CASES

(a) *Notice of Postconfirmation Filing Requirements.* Upon confirmation of a chapter 11 plan, the plan proponent shall obtain from the Clerk a notice of postconfirmation filing requirements.

(b) *Payment of Special Charges.* The debtor or trustee shall pay to the Clerk any special charges that may be assessed by the Court.

(c) *Postconfirmation Order and Notice.* At the time a proposed confirmation order is submitted to the Court, the plan proponent shall submit to the Court a proposed order and notice substantially in the following form:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
:
[Caption of Case] : Chapter 11 Case No. _____
:
:
-----X

POSTCONFIRMATION ORDER AND NOTICE

WHEREAS, a confirmation order has been issued on [insert date], and whereas it is the debtor's responsibility to inform the Court of the progress made toward (i) consummation of the plan under 11 U.S.C. § 1101(2), (ii) entry of a final decree under Rule 3022 of the Federal Rules of Bankruptcy Procedure, and (iii) case closing under 11 U.S.C. § 350; it is therefore

ORDERED, that the debtor or such other party as the Court may direct (the "Responsible Party"), shall comply with the following, except to the extent the Court orders otherwise:

- (1) Periodic Status Reports. Subject to the requirements set forth in paragraph 5 of this Order and 11 U.S.C. § 1106(a)(7), the Responsible Party shall file, within 45 days after the date of this Order, a status report detailing the actions taken by the Responsible Party and the progress made toward the consummation of the plan. Reports shall be filed thereafter every January 15th, April 15th, July 15th, and October 15th until a final decree has been entered.
- (2) Notices. The Responsible Party shall mail a copy of the confirmation order and this Order to the debtor, the attorney for the debtor, all committees, the attorney for each committee, and all parties who filed a notice of appearance.
- (3) Clerk's Charges and Report Information. Within 15 days of the date of this Order, the Responsible Party shall submit a written request to the Clerk to obtain the amount of any notice and excess claim charges. The amount shall be paid in full not later than [insert date].
- (4) Closing Report and Final Decree. Within 15 days following the distribution of any deposit required by the plan or, if no deposit was required, upon the payment of the first distribution required by the plan, the Responsible Party shall file a closing report

in accordance with Local Bankruptcy Rule 3022-1 and an application for a final decree.

(5) Case Closing. The Responsible Party shall submit the information described in paragraph 4 herein, including a final decree closing the case, within six calendar months from the date of the order confirming the plan. If the Responsible Party fails to comply with this Order, the Clerk shall so advise the Judge and an order to show cause may be issued.

Dated: _____, New York
_____, _____

UNITED STATES BANKRUPTCY JUDGE

Comment

This rule is derived from former Standing Order M-111.
Where the circumstances warrant, the Court has the discretion to alter the time periods prescribed herein.

Rule 3022-1 CLOSING REPORTS IN CHAPTER 11 CASES

Unless the Court orders otherwise, within 15 days following substantial consummation of a chapter 11 plan, the debtor or trustee shall file and serve upon the United States Trustee a closing report substantially in the following form:

PART IV THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1 RELIEF FROM AUTOMATIC STAY

A party moving for relief from the automatic stay under § 362 of the Bankruptcy Code shall seek to obtain a return date for the motion that is not more than 30 days after the date on which the motion will be filed.

Comment

This rule is derived from Former Local Bankruptcy Rule 44(a).

Bankruptcy Rule 4001(a) provides that a request for relief from the automatic stay shall be made by motion. Section 362(e) of the Bankruptcy Code contemplates that a hearing will commence within 30 days from the date of the request for relief from the automatic stay. Local Bankruptcy Rule 9006-1 governs the time within which responsive papers may be served.

Rule 4001-2 OBTAINING CREDIT

A motion pursuant to § 364(c) and (d) of the Bankruptcy Code seeking priority for obtaining credit or incurring debt shall state whether priority over any administrative expense specified in § 503(b) or § 507(a) of the Bankruptcy Code is sought.

Comment

This rule is derived from Former Local Bankruptcy Rule 47.

Rule 4003-1 EXEMPTIONS

(a) *Amendment to Claim of Exemptions.* An amendment to a claim of exemptions pursuant to Bankruptcy Rules 1009 and 4003 shall be filed and served by the debtor or dependent of the debtor on the trustee, the United States Trustee, and all creditors.

(b) *Automatic Extension of Time to File Objections to Claim of Exemptions In Event of Amendment to Schedules to Add a Creditor.* Unless the Court orders otherwise, if the schedules are amended to add a creditor, and the amendment is filed and served either (i) less than 30 days prior to the expiration of the time set forth in Bankruptcy Rule 4003(b) for the filing of objections to the list of properly claimed as exempt, or (ii) at any time after such filing deadline, the added creditor shall have 30 days from the date of service of the amendment to file objections to the list of properly claimed as exempt.

Comment

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 37. See Bankruptcy Rule 4003(b), which permits the trustee or any creditor to object to the list of property claimed as exempt within 30 days following the conclusion of the meeting of creditors held pursuant to Bankruptcy Rule 2003(a), or the filing of any amendment to the list or supplemental schedules unless, within such period, the Court grants additional time.

Subdivision (b) of this rule is new.

Rule 4004-1 AUTOMATIC EXTENSION OF TIME TO FILE COMPLAINT OBJECTING TO DISCHARGE IN EVENT OF AMENDMENT

Unless the Court orders otherwise, if the schedules are amended to add a creditor, and the amendment is filed and served either (i) less than 60 days prior to the expiration of the time set forth in Bankruptcy Rule 4004(a) for the filing of a complaint objecting to discharge, or (ii) at any time after such filing deadline, the added creditor shall have 60 days from the date of service of the amendment to file the complaint objecting to discharge.

Rule 4007-1 AUTOMATIC EXTENSION OF TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT IN EVENT OF AMENDMENT

Unless the Court orders otherwise, if the schedules are amended to add a creditor, and the amendment is filed and served either (i) less than 60 days prior to the expiration of the time set forth in Bankruptcy Rule 4007 for the filing of a complaint to obtain a determination of the dischargeability of any debt, or (ii) at any time after such filing deadline, the deadline for the filing of a complaint with respect to a claim of such creditor shall be 60 days from the date of service of the amendment upon such creditor.

Rule 4007-2 WITHDRAWAL OR SETTLEMENT OF PROCEEDINGS TO DETERMINE DISCHARGE AND DISCHARGEABILITY

(a) *Withdrawal of Complaint.* In the event of the withdrawal of a complaint objecting to discharge or failure to prosecute an adversary proceeding objecting to discharge, no discharge shall be granted unless the debtor shall make and file an affidavit and the debtor's attorney shall make and file a certification that no consideration has been promised or given, directly or indirectly, for the withdrawal or failure to prosecute.

(b) *Settlement of Proceedings.* In all instances not governed by § 524(d) of the Bankruptcy Code, no adversary proceeding to determine the dischargeability of a debt shall be settled except pursuant to an order of the Court after due inquiry into the circumstances of any settlement, including the terms of any agreement entered into between the debtor and creditor relating to the payment of the debt, in whole or in part.

Comment

This rule is derived from Former Local Bankruptcy Rule 48.

PART V COURTS AND CLERKS

Rule 5001-1 CLERK'S OFFICE: HOURS; AFTER HOURS FILING

The offices of the Clerk shall be open on Monday through Friday from 8:30 a.m. to 5:00 p.m., except on legal and Court holidays, and shall be closed on Saturdays and Sundays. When the Clerk's office is closed, papers, other than those requiring a filing fee, may be filed with the Court by depositing them in the night depository maintained by the District Clerk and are deemed filed as of the date and time stamped thereon.

Comment

This rule is derived from Former Local Bankruptcy Rule 8 as modified to conform to Civil Rule 1.2 of the Local District Rules.

Bankruptcy Rule 5001(c) permits the adoption of a local rule setting forth the business hours of the Clerk.

The District Clerk maintains a night depository at the United States Courthouse located at 500 Pearl Street, New York, New York. The filing of papers in the District Court's night depository is intended to be used where exigent circumstances exist and is not intended as a regular alternative for filing papers with the Court during normal business hours. Papers requiring a filing fee shall not be filed in the District Court's night depository.

Under Former Local Bankruptcy Rule 8, papers filed in the District Court's night depository were deemed filed in the Court as of 8:30 a.m. the following business day. In accordance with Civil Rule 1.2 of the Local District Rules and *Greenwood v. New York*, 842 F.2d 636 (2d Cir. 1988), this rule deems papers deposited in the District Court's night depository to have been filed as of the date and time stamped thereon.

Rule 5005-1 FILING PAPERS

Except as provided in Local Bankruptcy Rule 1002-1, unless filed by electronic means, all papers shall be filed in the office of the Clerk that is located where the Judge assigned to the case or proceeding sits.

Comment

This rule is derived from Former Local Bankruptcy Rule 9(a).

Rule 5005-2 FILING BY ELECTRONIC MEANS

In cases in which electronic filing is required, documents shall be filed, signed, or verified by means that are consistent with any standing orders issued by the Court.

Comment

This rule is new and implements the authority contained in Bankruptcy Rule 5005(a). Copies of any applicable standing orders of the Court may be obtained from the Clerk.

**Rule 5009-1 FINAL REPORT AND ACCOUNT AND
CLOSING REPORT IN A CHAPTER 7 CASE**

(a) *Final Report and Account.* Unless the Court orders otherwise, the notice given by the trustee of the filing of a final report and account in the form prescribed by the United States Trustee in a chapter 7 case shall have on its face in bold type the following language, or words of similar import:

**A PERSON SEEKING AN AWARD OF COMPENSATION
OR REIMBURSEMENT OF EXPENSES SHALL FILE AN
APPLICATION WITH THE CLERK AND SERVE A COPY
ON THE TRUSTEE AND THE UNITED STATES TRUSTEE
NOT LATER THAN 20 DAYS PRIOR TO THE DATE OF THE
HEARING ON THE TRUSTEE'S FINAL ACCOUNT.
FAILURE TO FILE AND SERVE SUCH AN APPLICATION
WITHIN THAT TIME MAY RESULT IN THE
DISALLOWANCE OF FEES AND EXPENSES.**

(b) *Closing Report in an Asset Case.* Unless the Court orders otherwise, in a chapter 7 asset case, the trustee shall file and serve upon the United States Trustee, together with the affidavit of final distribution, a closing report substantially in the following form:

TRUSTEE REPORT
TO THE CLERK'S OFFICE

CHAPTER 7 CLOSING REPORT IN AN ASSET CASE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

CHAPTER 7

DEBTOR NAME:

CASE NO.

GROSS CASH RECEIPTS: \$

FEES AND EXPENSES (From case inception):

_____ TRUSTEE COMPENSATION
_____ FEE for ATTORNEY FOR TRUSTEE
_____ OTHER PROFESSIONAL FEES and ALL EXPENSES
(including fee for debtor's attorney)

DISTRIBUTIONS (From case inception):

_____ SECURED CREDITORS
_____ PRIORITY CREDITORS
_____ UNSECURED CREDITORS
_____ EQUITY SECURITY HOLDERS
_____ OTHER DISTRIBUTIONS (including payments to debtor, bond premiums,
court reporters, storage, lien searches)
===== TOTAL

DATED:

FOR THE TRUSTEE:

BY _____

(c) *Closing Report in a No Asset Case.* Unless the Court orders otherwise, in a chapter 7 no asset case, the trustee shall file and serve upon the United States Trustee a closing report substantially in the following form:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
:
[Caption of Case] : Chapter 7 Case No. _____
:
:
-----X

TRUSTEE'S REPORT OF NO DISTRIBUTION

I, _____, having been appointed trustee of the estate of the above-named debtor, report that I neither received any property nor paid any money on account of this estate except exempt property; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law.

Pursuant to Bankruptcy Rule 5009, I hereby certify that the estate of the above-named debtor has been fully administered.

I request that this report be approved and that I be discharged from any further duties as trustee.

DATED: _____, _____

Trustee

Comment

Subdivision (a) of this rule is derived from former Standing Order M-90.

Subdivisions (b) and (c) of this rule, added in 1996, complement § 704(9) of the Bankruptcy Code. Although not specifying a particular time period, subdivision (b) of this rule contemplates that the trustee will file the closing report as soon as practicable after the filing of a final account and the final allowance of fees. Thereafter, the Clerk may close the case upon the entry of a final decree.

Rule 5010-1 REOPENING CASES

(a) *Contents of Motion.* A motion to reopen a case pursuant to Bankruptcy Rule 5010 shall be in writing and state the name of the Judge to whom the case was assigned at the time it was closed.

(b) *Reference.* A motion to reopen a case shall be filed with the Clerk. The Clerk shall refer the motion to the Judge to whom the case was assigned at the time it was closed. If that Judge is no longer sitting, the motion shall be assigned in accordance with Local Bankruptcy Rule 1073-1.

Comment

This rule is derived from Former Local Bankruptcy Rule 11.

Rule 5011-1 WITHDRAWAL OF REFERENCE

A motion for withdrawal of the reference shall be filed with the Clerk of the Court. The Clerk promptly shall transmit the motion to the District Clerk and notify the movant of the transmission. The movant shall be responsible for notifying all other parties of the transmission. Following transmission of the motion to the District Clerk, all further papers with respect to the motion shall be filed in the District Court.

Rule 5070-1 OBTAINING RETURN DATE

Unless the Court orders otherwise, prior to serving a motion, cross-motion, or application, the moving party or applicant shall obtain a return date from the Judge's chambers.

Comment

This rule is derived from former Standing Order M-93.

Pursuant to Local Bankruptcy Rule 9004-2(b), the return date obtained under this rule shall be included in the upper right- hand corner of the caption of the motion or application.

Rule 5073-1 PHOTOGRAPHING, BROADCASTING, AND TELEVISIONING IN COURTROOMS AND ENVIRONS

The taking of photographs and the use of recording devices in a courtroom or its environs, except by officials of the Court in the conduct of the Court's business, and radio or television broadcasting from a courtroom or its environs, during the progress of, or in connection with, judicial proceedings or otherwise, whether or not the Court is actually in session, are prohibited.

Comment

This rule is derived from Former Local Bankruptcy Rule 35 and is an adaptation of Civil Rule 1.8 of the Local District Rules.

This rule extends the District Court's restrictions to all bankruptcy courtrooms in this district, including those located in White Plains and Poughkeepsie.

Rule 5075-1 CLERK'S USE OF OUTSIDE SERVICES AND AGENTS

(a) The Court may direct, subject to the supervision of the Clerk, the use of agents either on or off the Court's premises to file Court records, either by paper or electronic means, to issue notices, to maintain case dockets, to maintain Judges' calendars, and to maintain and disseminate other administrative information where the costs of such facilities or services are paid for by the estate.

(b) The Clerk shall maintain a duplicate of all electronic records maintained by agents appointed by the Court.

Comment

This rule complements 28 U.S.C. § 156(c). Pursuant to the guidelines of the Judicial Conference of the United States, the Clerk is responsible for the security and integrity of all Court records.

Rule 5076-1 DEPOSIT FOR COURT REPORTING EXPENSES

The Court may enter an order directing a party who commences an adversary proceeding or contested matter to deposit with the court reporter such sums as the Judge may determine are necessary to pay the court reporting expense. The order also may state that the adversary proceeding or contested matter may be dismissed without prejudice if the deposit is not made.

Comment

This rule is derived from Former Local Bankruptcy Rule 12.

Local Bankruptcy Rule 9023-1(b) governs the taxing of costs of court reporting services.

Rule 5078-1 PAYMENT OF FEES

Unless the Court orders otherwise, the Clerk shall not be required to render any service for which a fee is prescribed by statute or the Judicial Conference of the United States unless the fee is paid in advance.

Comment

This rule is derived from Former Local Bankruptcy Rule 10 and is an adaptation of Civil Rule 1.7 of the Local District Rules.

An application for permission to make installment payments may be filed pursuant to Bankruptcy Rule 1006(b).

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004-1 SALES OF PROPERTY, APPRAISALS, AND AUCTIONS

(a) *Notice.* The notice of any proposed sale of property of the estate having an aggregate gross value of at least \$2,500 shall include the time and place of the proposed sale, whether the sale will be public or private, and the terms and conditions of the proposed sale.

(b) *Appraisals.* Unless the Court orders otherwise, if an appraiser has been employed, the property to be appraised shall not be sold until after the appraisal has been filed.

(1) *Caption.* All appraisals filed with the Court shall have a cover sheet bearing the caption of the case in compliance with Local Bankruptcy Rule 9004-2 and the date, if any, of the proposed sale.

(2) *Filing and Access.* Unless the Court orders otherwise, any appraiser employed pursuant to § 327(a) of the Bankruptcy Code shall file with the Court and the United States Trustee each appraisal made of property of the estate not later than 12:00 noon on the business day prior to the scheduled sale of the property. Each appraisal shall be kept under seal upon filing and treated as confidential by the Court and the United States Trustee. Access to the appraisal may be had only by the Court, the United States Trustee, and such other parties as the Court may direct, and neither they nor the appraiser shall disclose any of the contents thereof until after the conclusion of the bidding at any sale of the appraised property, at which time the Court may order the appraisal to be unsealed. Unless the Court orders otherwise, the appraisal shall be unsealed six months from the date on which the appraisal is filed.

(3) *Conformity with Auctioneer's Catalogue of Sale.* If property is to be appraised and sold at auction, upon request, the auctioneer promptly shall deliver the catalogue of sale to the appraiser. The appraisal shall conform to the catalogue to the greatest extent possible.

(c) *Manner of Display and Conduct of Auction.* Unless the Court orders otherwise, the auction shall be conducted in the following manner:

(1) The property shall be on public display for a reasonable period of time prior to the sale.

(2) Prior to receiving bids, the auctioneer shall announce the terms of sale.

(3) Where practicable, the property shall be offered for sale first in bulk and then in lots.

(4) Any property that is not to be included in the sale shall be set apart and conspicuously marked "not included in the sale," and such fact shall be announced by the auctioneer before the sale.

(d) *Joint Sales.* Whenever the trustee and a secured party, or other third party having an interest in the property, desire to conduct a joint auction sale, the Court shall enter an order prior to the sale fixing the method of allocating the commissions and expenses of sale.

(e) *Proceeds of Sale.* Upon receipt of the proceeds of sale, the auctioneer immediately shall deposit the proceeds in a separate account that the auctioneer maintains for each estate in accordance with the requirements of § 345(a) of the Bankruptcy Code. Unless the Court orders otherwise, payment of the gross proceeds of the sale, less the auctioneer's reimbursable

expenses, shall be made promptly by the auctioneer to the trustee or debtor in possession, but in no event later than 10 days after the date on which the proceeds are received with respect to each item or lot sold.

(f) *Report of Sale.* Unless the Court orders otherwise, (i) within 20 days after the last date of the auction, the auctioneer shall file a report with the Court and transmit a copy of the report to the United States Trustee, and (ii) if all proceeds of the auction have not been received by such date, the auctioneer shall file a supplemental report within 10 days after all proceeds have been received. The report shall set forth:

- (1) the time, date, and place of the sale;
- (2) the gross dollar amount of the sale;
- (3) if property was sold in lots, a description of the items in each lot, the quantity in each lot, the dollar amount received for each lot, and any bulk bid(s) received;
- (4) an itemized statement of expenditures, disbursements, and commissions allowable under Local Bankruptcy Rule 6005-1, including the name and address of the payee, together with the original receipts or canceled checks, or true copies thereof, for the expenditures or disbursements. Where labor charges are included, the report shall specify the days worked and the number of hours worked each day by each person and the person's social security number. If the canceled checks are not available at the time the report is filed, the report shall so state, and the canceled checks shall be filed as soon as they become available;
- (5) where the auctioneer has a blanket insurance policy covering all sales conducted by the auctioneer, for which original receipts and canceled checks are not available, an explanation of how the insurance expense charged to the estate was computed;
- (6) if any articles were withdrawn from the sale because of a third party claim of an interest therein, a separate itemized statement of the articles reflecting the names of such third parties;
- (7) the names and addresses of all purchasers;
- (8) the sign-in sheet, if any; otherwise, the approximate number of people attending the sale;
- (9) the items for which there were no bids and the disposition of those items;

(10) the terms and conditions of sale that were read to the audience immediately prior to the commencement of the sale;

(11) a statement of the manner and extent of advertising of the sale;

(12) a statement of the manner and extent of the availability of the items for inspection; and

(13) any other information that the United States Trustee may request.

(g) *Affidavit to Accompany Report of Sale.* The auctioneer shall submit with the report of sale an affidavit stating: (i) that the auctioneer is a duly licensed auctioneer; (ii) the auctioneer's license number and place of business; (iii) the authority pursuant to which the auctioneer conducted the auction; (iv) the date and place of the auction; (v) that the labor and other expenses incurred on behalf of the estate as listed in the report of sale were reasonable and necessary; and (vi) that the gross proceeds of sale, exclusive of expenses, were remitted to the trustee or debtor in possession and the date of the remittance.

(h) *Advertisement and Publication of Notice of Sale.* An advertisement or publication of notice of a sale by auction or otherwise may be made without Court approval if it is sufficient to provide adequate notice of the sale and is advertised or published at least once in a newspaper of general circulation in the city or county in which the property is located. The advertisement or publication shall include: (i) the date, time, and place of the sale; (ii) a description of the property to be sold including, with respect to real property, the approximate acreage of any real estate outside the limits of any town or city, the street, lot, and block number of any real estate within any town or city, and a general statement of the character of any improvements upon the property; (iii) the terms and conditions of the sale; and (iv) the name, address, and telephone number of the trustee or debtor in possession. The Court may fix the manner and extent of advertising and publication at any time.

(i) *No Order Needed to Confirm Sale.* Unless a timely objection is made, no order of the Court shall be required to confirm a sale of property pursuant to this rule. The trustee, debtor, or debtor in possession may execute any documents and instruments that are necessary to complete the sale and shall file with the Court and transmit to the United States Trustee a report of the sale as required by Local Bankruptcy Rule 6004-1(f) when the sale is completed. On request, the Clerk shall issue a certificate stating that a notice of a proposed action, with proof of service, has been filed with the Court pursuant to Local Bankruptcy Rule 2002-2 and that no timely objection has been filed.

(j) *Compliance with United States Trustee's Guidelines.* In addition to the foregoing requirements, parties conducting a sale of property of the estate, including trustees and auctioneers, shall comply with the requirements contained in any guidelines promulgated by the United States Trustee.

Comment

Subdivision (a) of this rule was added in 1996. Subdivision (b) of this rule is derived from Former Local Bankruptcy Rule 40. Subdivisions (c), (d), (e), (f), and (g) of this rule are derived from Former Local Bankruptcy Rule 41. Subdivision (h) of this rule is derived from Former Local Bankruptcy Rule 42. Subdivision (i) of this rule is derived from Former Local Bankruptcy Rule 45(g). Subdivision (j) of this rule is new.

Subdivisions (e) and (f) of this rule have been amended. Subdivision (e) makes clear that the proceeds of an auction must be turned over within 10 days of their receipt, even if the auction has not yet concluded. Unlike subdivision (e), which requires the turnover of proceeds with respect to each lot or item of property, subdivision (f) contemplates the filing of a report within 20 days after the auction has been concluded and the supplementing of such report when the proceeds are received thereafter.

The contents of a notice of a proposed sale are governed by Bankruptcy Rule 2002(c)(1).

Rule 6005-1 AUCTIONEERS

(a) *No Official Auctioneer.* There shall be no official auctioneer.

(b) *Compensation.* Unless the Court orders otherwise for cause, compensation and reimbursement of expenses shall be allowed to an auctioneer for sales of property as follows:

(1) commissions on each sale conducted by the auctioneer at the following rates:

- (A) 10% of any gross proceeds of sale up to \$50,000;
- (B) 8% of any gross proceeds of sale in excess of \$50,000 but not more than \$75,000;
- (C) 6% of any gross proceeds of sale in excess of \$75,000 but not more than \$100,000;

(D) 4% of any gross proceeds of sale in excess of \$100,000 but not more than \$150,000; and

(E) 2% of any gross proceeds of sale in excess of \$150,000; and

(2) reimbursement for reasonable and necessary expenses directly related to the sale, including labor, printing, advertising, and insurance, but excluding workers' compensation, social security, unemployment insurance, and other payroll taxes. When directed by the trustee or debtor in possession to transport goods, the auctioneer shall be reimbursed for expenditures related thereto. No travel expenses shall be allowed, except as ordered by the Court.

(c) *Purchase Prohibited.* An auctioneer, or officer, director, stockholder, agent, or employee of an auctioneer, shall not purchase directly or indirectly, or have a financial interest in the purchase of, any property of the estate that the auctioneer has been employed to sell.

(d) *Bond.* An auctioneer employed pursuant to § 327 of the Bankruptcy Code shall not act until the auctioneer files with respect to each estate, at the auctioneer's expense, a surety bond in favor of the United States, to be approved, and in such sum as may be fixed, by the United States Trustee, which is conditioned upon:

(1) the faithful and prompt accounting for all monies and property that may come into the auctioneer's possession;

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

(3) the faithful performance of the auctioneer's duties.

(e) *Blanket Bond.* In lieu of a bond in each case, an auctioneer may be permitted to file, at the auctioneer's own expense, a blanket bond covering all cases in which the auctioneer may act. The blanket bond shall be in favor of the United States in such sum as the United States Trustee shall fix and shall be conditioned for each estate on the same terms as bonds in separate estates.

(f) *Application for Commissions.* An auctioneer shall file an application with the Court for approval of commissions on not less than five days' notice to the debtor, the trustee, the United States Trustee, and each committee. No application shall be granted unless the report of sale referred to in Local Bankruptcy Rule 6004-1(f) has been filed.

(g) *Compliance with United States Trustee's Guidelines.* In addition to the foregoing requirements, an auctioneer shall comply with the requirements contained in any guidelines promulgated by the United States Trustee.

Comment

This rule is derived from Former Local Bankruptcy Rule 41.
Subdivision (g) of this rule is new.

Advertisements of auction sales are governed by Local
Bankruptcy Rule 6004-1(h).

Rule 6006-1 EXECUTORY CONTRACTS AND UNEXPIRED LEASES

(a) *Motion to Assume, Reject, or Assign Executory Contract or Unexpired Lease.* A motion to assume, reject, or assign an executory contract or unexpired lease shall be served in accordance with the time limits set forth in Local Bankruptcy Rule 9006-1(b), which may be waived or modified upon the written consent of all parties entitled to notice of the motion. In the event that a nonconsensual order is sought on fewer than 10 days' notice, Local Bankruptcy Rule 9077-1 shall govern and an actual hearing shall be held.

(b) *Motion to Assume Executory Contract or Unexpired Lease in Chapter 7 Case.* Unless the Court orders otherwise, in a chapter 7 case, a trustee moving to assume an executory contract or unexpired lease of residential real property or personal property of the debtor shall seek to obtain a return date for the hearing on the motion that is not more than 60 days after the order for relief or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

(c) *Motion to Assume Unexpired Lease of Nonresidential Real Property.* Unless the Court orders otherwise, in a case under any chapter, a debtor, debtor in possession, or trustee moving to assume an unexpired lease of nonresidential real property under which the debtor is the lessee shall seek to obtain a return date for the hearing on the motion that is not more than 60 days after the order for relief or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

(d) *Aircraft Equipment and Vessels.* Unless the Court orders otherwise, a debtor in possession or trustee moving for approval of an agreement to perform all obligations of the debtor pursuant to § 1110(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the motion that is not more than 60 days after the order for relief or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

(e) *Rolling Stock Equipment.* Unless the Court orders otherwise, a trustee moving for approval of an agreement to perform all obligations of the debtor pursuant to § 1168(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the

motion that is not more than 60 days after the date of commencement of the case or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

Comment

Subdivision (a) of this rule is derived from former Standing Order M-118. Subdivisions (b) and (c) of this rule are derived from Former Local Bankruptcy Rule 44(b) and (c). Subdivisions (d) and (e) of this rule, added in 1996, are derived from §§ 1110 and 1168 of the Bankruptcy Code.

Section 365(d)(1) of the Bankruptcy Code contemplates that a hearing on a motion by a chapter 7 trustee to assume an executory contract or unexpired lease of residential real property or personal property of the debtor ordinarily will take place within 60 days from the date of the order for relief. Likewise, § 365(d)(4) of the Bankruptcy Code contemplates that a final hearing on a motion by a debtor, debtor in possession, or trustee to assume an unexpired lease of nonresidential real property of the debtor ordinarily will take place within 60 days from the date of the order for relief. In order to avoid automatic rejection of an executory contract or unexpired lease pursuant to § 365(d)(1) or (4) of the Bankruptcy Code, a motion must be filed and an order obtained extending the time specified in § 365(d)(1) or (4) of the Bankruptcy Code.

Rule 6007-1 ABANDONMENT OR DISPOSITION OF PROPERTY

(a) Unless the Court orders otherwise, the notice of a proposed abandonment or disposition of property pursuant to Bankruptcy Rule 6007(a) shall describe the property to be abandoned or disposed of, state concisely the reason for the proposed abandonment or disposition, and, in the case of abandonment, identify the entity to whom the property is proposed to be abandoned.

(b) If the trustee files a notice of abandonment of a residential real property lease, other than a proprietary lease for a cooperative residence, the notice need only be served on the debtor and the landlord.

Comment

This rule, added in 1996, simplifies the procedure for abandonment of an individual debtor's leased residence that is of no value to the estate so that the debtor may remain in such premises.

PART VII ADVERSARY PROCEEDINGS

Rule 7005-1 FILING OF DISCOVERY-RELATED DOCUMENTS

(a) Except as provided in subdivision (b) of this rule, unless the Court orders otherwise, transcripts of depositions, exhibits to depositions, interrogatories, answers to interrogatories, document requests, responses to document requests, requests for admissions, and responses to requests for admissions shall not be filed with the Court.

(b) When discovery or disclosure material not on file with the Court is needed for an appeal, the necessary portion of that material may be filed with the Clerk.

Comment

This rule is derived from Civil Rule 5.1 of the Local District Rules.

Rule 7007-1 DISCOVERY-RELATED MOTION PRACTICE

(a) *Attorney's Affidavit.* No discovery-related motion under Bankruptcy Rules 7026 through 7037 shall be heard unless counsel for the moving party files with the Court, at or prior to the hearing, an affidavit certifying that such counsel has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and has been unable to reach an agreement. If any of the issues raised by motion have been resolved by agreement, the affidavit shall specify the issues so resolved and the issues remaining unresolved.

(b) *Request for Informal Conference.* No discovery-related motion under Bankruptcy Rules 7026 through 7037 shall be heard unless counsel for the moving party first requests an informal conference with the Court and either the request has been denied or the discovery dispute has not been resolved as a consequence of the conference.

Comment

This rule is derived from Former Local Bankruptcy Rule 13. Subdivision (a) of this rule is an adaptation of Civil Rule 3(f) of the

Former District Rules. Subdivision (b) of this rule is an adaptation of Civil Rule 37.2 of the Local District Rules.

Rule 7016-1 SUBMISSION OF MARKED PLEADINGS

Unless the Court orders otherwise, at least one day before an adversary proceeding is scheduled for trial, counsel for the plaintiff shall provide the Judge and opposing counsel with a copy of marked pleadings, which shall consist of the following:

- (a) a copy of the complaint and any third party complaint, cross-claim, or counterclaim, briefly indicating in the margin thereof, at each numbered paragraph, the manner in which the defendant or respondent, or any third party defendant or respondent who has filed an answer thereto, responds to the allegations contained in each paragraph;
- (b) a copy of each answer filed in the adversary proceeding or action; and
- (c) a copy of each reply filed in the adversary proceeding or action.

Comment

This rule is derived from Former Local Bankruptcy Rule 16 and is an adaptation of Civil Rule 21 of the Former District Rules.

Rule 7024-1 NOTICE OF CLAIM OF UNCONSTITUTIONALITY

(a) *Acts of Congress.* If, at any time prior to the trial of an adversary proceeding to which neither the United States nor any agency, officer, or employee thereof (other than the United States Trustee) is a party, a party raises a question concerning the constitutionality of an act of Congress affecting the public interest, such party shall notify the Judge in writing of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and proceeding.

(b) *State Statutes.* If, at any time prior to the trial of an adversary proceeding to which neither a state nor any agency, officer, or employee thereof is a party, a party raises a question concerning the constitutionality of a statute of such state affecting the public interest, such party shall notify the Judge in writing of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and proceeding.

Comment

This rule is derived from Former Local Bankruptcy Rule 15 and Civil Rule 24.1 of the Local District Rules. Subdivision (b) of this rule is new.

The purpose of this rule is to enable the Court to comply with 28 U.S.C. § 2403(a) and (b). Section 2403(a) requires notice to the United States Attorney General. Section 2403(b) requires notice to the attorney general of the state.

Local Bankruptcy Rule 9014-1 makes this rule applicable in contested matters.

Rule 7026-1 UNIFORM DEFINITIONS IN DISCOVERY REQUESTS

Civil Rule 26.3 of the Local District Rules shall apply to discovery requests made in cases and proceedings commenced under the Bankruptcy Code.

Comment

This rule contains a technical change to reflect a renumbering of the applicable Local District Rule.

Rule 7026-2**OPT-OUT FROM CERTAIN PROVISIONS OF RULE 26 OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

Civil Rule 26.4 of the Local District Rules, pursuant to which the District Court has opted out from certain provisions of Rule 26 of the Federal Rules of Civil Procedure, shall apply in cases and proceedings commenced under the Bankruptcy Code.

Comment

This rule is new and provides that certain provisions of Rule 26 of the Federal Rules of Civil Procedure, governing discovery, are not operative in bankruptcy cases and proceedings in this district.

Rule 7027-1**DEPOSITIONS PRIOR TO COMMENCEMENT OF ADVERSARY
PROCEEDING OR PENDING APPEAL WHEN DEPOSITION IS
MORE THAN 100 MILES FROM COURTHOUSE**

If, prior to the commencement of an adversary proceeding or pending appeal, a proposed deposition pursuant to Bankruptcy Rule 7027 is sought to be taken at a location more than 100 miles from the courthouse, the Court may provide in the order therefor that, prior to the examination, the party seeking to take the deposition shall pay the expense of the attendance of one attorney for each adverse party, or expected adverse party, including reasonable attorney's fees. Unless the Court orders otherwise, any amounts paid pursuant to this subdivision shall be a taxable cost in the event the party taking the deposition is awarded costs of the adversary proceeding.

Comment

This rule is derived from Former Local Bankruptcy Rule 24 and is an adaptation of Civil Rule 30.1 of the Local District Rules.

Rule 7030-1**DEPOSITIONS UPON ORAL EXAMINATION**

If a proposed deposition upon oral examination is sought to be taken at a location more than 100 miles from the courthouse, the Court may provide in any order entered pursuant to Bankruptcy Rule 7030 that, prior to the examination, the party seeking to take the deposition shall pay the expense of the attendance of one attorney for each adverse party, or expected adverse party, including reasonable attorneys' fees. Unless the Court orders otherwise, any amounts paid pursuant to

this subdivision shall be a taxable cost in the event that the party taking the deposition is awarded costs of the adversary proceeding.

Comment

This rule is derived from Former Local Bankruptcy Rule 24 and is an adaptation of Civil Rule 30.1 of the Local District Rules.

**Rule 7030-2 OPT-OUT FROM CERTAIN PROVISIONS OF RULE 30 OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

Civil Rule 30.2 of the Local District Rules, pursuant to which the District Court opted out from certain provisions of Rule 30 of the Federal Rules of Civil Procedure, shall apply in cases and proceedings commenced under the Bankruptcy Code. However, Rule 30(a)(2)(B) of the Federal Rules of Civil Procedure, which is otherwise applicable under the Local District Rules, shall only apply in adversary proceedings and contested matters.

Comment

This rule is new and provides that certain provisions of Rule 30(a)(2) of the Federal Rules of Civil Procedure, governing depositions upon oral examination, are not operative in bankruptcy cases and proceedings in this district. This rule also provides that Rule 30(a)(2)(B) of the Federal Rules of Civil Procedure, which requires leave of court if a person is to be deposed upon oral examination more than once in the same case, only applies in adversary proceedings and contested matters within a bankruptcy case.

**Rule 7031-1 OPT-OUT FROM CERTAIN PROVISIONS OF RULE 31 OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

Civil Rule 31.1 of the Local District Rules, pursuant to which the District Court has opted out from certain provisions of Rule 31 of the Federal Rules of Civil Procedure, shall apply in cases and proceedings commenced under the Bankruptcy Code. However, Rule 31(a)(2)(B) of the Federal Rules of Civil Procedure, which is otherwise applicable under the Local District Rules, shall only apply in adversary proceedings and contested matters.

Comment

This rule is new and provides that certain provisions of Rule 31 of the Federal Rules of Civil Procedure, governing depositions upon written questions, are not operative in bankruptcy cases and proceedings in this district. This rule also provides that Rule 31(a)(2)(B) of the Federal Rules of Civil Procedure, which requires leave of court if a person is to be deposed upon written questions more than once in the same case, only applies in adversary proceedings and contested matters within a bankruptcy case.

Rule 7033-1 INTERROGATORIES

(a) *Restrictions.* At the commencement of discovery, interrogatories will be restricted to those questions seeking names of witnesses with knowledge or information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location, and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, and information of a similar nature.

(b) *Method of Obtaining Information.* During discovery, interrogatories, other than those seeking information described in subdivision (a) of this rule, may be served only if (i) they are a more practical method of obtaining the information sought than a request for production or a deposition or (ii) ordered by the Court.

(c) *What May Be Served.* Unless the Court orders otherwise, at the conclusion of each party's discovery, and prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served. Questions seeking the names of expert witnesses and the substance of their opinions also may be served if such information has not yet been supplied.

(d) *No Interrogatories to Be Unanswered.* No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

(e) *Objections or Requests for Relief.*

(1) In connection with any objection or request for relief with respect to interrogatories or answers to interrogatories, the party making the objection or request for relief shall (i) simultaneously file a copy of the interrogatories or answers to interrogatories and (ii) specify and quote verbatim each relevant interrogatory or answer and, immediately following each specification, set forth the basis of the objection or relief requested.

(2) If an objection or request for relief is made to any interrogatory or portion thereof, the objection shall state all grounds with specificity. Any ground not stated in the objection or request for relief within the time provided by the Bankruptcy Rules, or any extensions thereof, shall be deemed waived.

(3) If a claim of privilege is asserted in an objection or request for relief with respect to any interrogatory or portion thereof, and an answer is not provided on the basis of the assertion, the objection or request for relief shall identify:

(A) the nature of the privilege being claimed and, if the privilege is being asserted in connection with a claim or defense governed by state law, the state's privilege rule being invoked; and

(B) unless divulgence of such information would cause disclosure of the allegedly privileged information:

1. for documents: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author to the addressee and the names of all entities that received a copy of the document.

2. for oral communications: (i) the name of the person making the communication, the names of any persons present while the communication was made, and, where not apparent, the relationship of the persons present to the person making the communication; (ii) the date and place of the communication; and (iii) the general subject matter of the communication.

(f) *Reference to Records.* If a party answers an interrogatory by reference to records from which the answer may be derived or ascertained, as permitted by Bankruptcy Rule 7033:

(1) the specification of documents to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and ascertain the answer as readily as could the party from whom discovery is sought;

(2) the producing party shall also make available any computerized information or summaries thereof that it has, or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery;

(3) the producing party shall also provide any relevant compilations, abstracts, or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery; and

(4) unless the Court orders otherwise, the documents shall be made available for inspection and copying within 10 days after service of the answers to interrogatories or on a date agreed upon by the parties.

Comment

This rule is derived from Former Local Bankruptcy Rule 14 and is an adaptation of Civil Rules 5.1, 33.1, 33.3, and 37.1 of the Local District Rules, with the exception of subdivision (e)(1) of this rule, which is derived from Former Local Bankruptcy Rule 13.

Rule 7033-2 OPT-OUT FROM CERTAIN PROVISIONS OF RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Civil Rule 33.4 of the Local District Rules, pursuant to which the District Court has opted out from certain provisions of Rule 33 of the Federal Rules of Civil Procedure, shall apply in cases and proceedings commenced under the Bankruptcy Code.

Comment

This rule is new and provides that certain provisions of Rule 33 of the Federal Rules of Civil Procedure, governing interrogatories, are not operative in bankruptcy cases and proceedings in this district.

Rule 7034-1 OBJECTIONS TO, AND REQUESTS FOR RELIEF WITH RESPECT TO, PRODUCTION OF DOCUMENTS

(a) In connection with any objection or request for relief with respect to document requests or answers thereto, the party making the objection or request for relief shall (i) simultaneously file a copy of the document request or answer and (ii) specify and quote verbatim each relevant document request or answer and, immediately following each specification, set forth the basis of the objection or relief requested.

(b) If an objection or request for relief is made with respect to any document request or portion thereof, the objection or request for relief shall state all grounds with specificity. Any ground not stated in the objection or request for relief within the time provided by the Bankruptcy Rules, or any extensions thereof, shall be deemed waived.

(c) If a claim of privilege is asserted in an objection or request for relief with respect to any document request or portion thereof, and an answer is not provided on the basis of the assertion, the objection or request for relief shall identify:

(1) the nature of the privilege being claimed and, if the privilege is being asserted in connection with a claim or defense governed by state law, the state's privilege rule being invoked; and

(2) unless divulgence of such information would cause disclosure of the allegedly privileged information: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author to the addressee, and the names of all entities that received a copy of the document.

Comment

This rule is derived from Former Local Bankruptcy Rule 14(e). Subdivision (a) of this rule is new and has been added to conform to subdivision (e)(1) of Local Bankruptcy Rule 7033-1. Subdivision (c)(2) of this rule has been modified to conform to subdivision (e)(3)(B)(1) of Local Bankruptcy Rule 7033-1.

Rule 7034-2 OPT-OUT FROM CERTAIN PROVISIONS OF RULE 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Civil Rule 34.1 of the Local District Rules, pursuant to which the District Court has opted out from certain provisions of Rule 34 of the Federal Rules of Civil Procedure, shall apply in cases and proceedings commenced under the Bankruptcy Code.

Comment

This rule is new and provides that certain provisions of Rule 34 of the Federal Rules of Civil Procedure, governing, among other things, production of documents, are not operative in bankruptcy cases and proceedings in this district.

Rule 7036-1 REQUESTS FOR ADMISSION

In connection with any objection to a request for admission, the objecting party shall (i) file a copy of the request for admission simultaneously with the filing of the objection, (ii) specify and quote verbatim in the objection each request to which the objection is made, and (iii) immediately following each specification, set forth the basis of the objection.

Comment

This rule is derived from Former Local Bankruptcy Rule 13(f) and is an adaptation of Civil Rule 37.1 of the Local District Rules.

Rule 7036-2 OPT-OUT FROM CERTAIN PROVISIONS OF RULE 36 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Civil Rule 36.1 of the Local District Rules, pursuant to which the District Court has opted out from certain provisions of Rule 36 of the Federal Rules of Civil Procedure, shall apply in cases and proceedings commenced under the Bankruptcy Code.

Comment

This rule is new and provides that certain provisions of Rule 36 of the Federal Rules of Civil Procedure, governing requests for admission, are not operative in bankruptcy cases and proceedings in this district.

Rule 7052-1 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before or after the announcement of its decision, the Court, on notice to all parties, may require one or more parties to submit proposed findings of fact and conclusions of law. Any party submitting proposed findings of fact and conclusions of law shall serve them on all other parties within the time fixed by the Court. Unless adopted by the Court, proposed findings of fact and conclusions of law shall not form any part of the record.

Comment

This rule is derived from Former Local Bankruptcy Rule 18 and is an adaptation of Civil Rule 23 of the Former District Rules.

Rule 7055-1 CERTIFICATE OF DEFAULT

A party applying for a certificate of default from the Clerk pursuant to Bankruptcy Rule 7055 shall submit an affidavit, together with proof of service, showing that (i) the party against whom a default is sought is not an infant, in the military, or an incompetent person, (ii) the party has failed to plead or otherwise defend the action, and (iii) the pleading to which no response has been made was properly served.

Comment

This rule is new and is derived from Civil Rule 55.1 of the Local District Rules.

Rule 7055-2 DEFAULT JUDGMENT

(a) *By the Clerk.* Upon issuance by the Clerk of a certificate of default, if the claim to which no response has been made only seeks payment of a sum certain and does not include a request for attorney's fees or other substantive relief, and if a default judgment is sought against all remaining parties to the action, the moving party may request that the Clerk enter a default judgment by submitting an affidavit, together with proof of service, showing the principal amount due and owing, not exceeding the amount sought in the claim to which no response has been made, plus interest, if any, computed by the party, with credit for all payments received to date clearly set forth, and costs, if any, pursuant to 28 U.S.C. § 1920.

(b) *By the Court.* In all other cases, the party seeking a judgment by default shall apply to the Court as described in Bankruptcy Rule 7055, and shall append to the application (i) the Clerk's certificate of default, (ii) a copy of the claim to which no response has been made, (iii) a proposed form of default judgment, and (iv) proof of service of the application.

Comment

This rule is new and is derived from Civil Rule 55.2 of the Local District Rules.

Rule 7056-1 SUMMARY JUDGMENT

(a) Upon any motion for summary judgment pursuant to Bankruptcy Rule 7056, there shall be annexed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit the statement shall constitute grounds for denial of the motion.

(b) Papers opposing a motion for summary judgment shall include a separate, short, and concise statement of each material fact as to which it is contended that there is a genuine issue to be tried.

(c) All material facts set forth in the statement required to be served by the moving party shall be deemed admitted unless controverted by the statement required to be served by the opposing party.

(d) Each statement of material fact by a movant or opponent must be followed by citation to evidence which would be admissible.

Comment

 This rule is derived from Former Local Bankruptcy Rule 13(h) and is an adaptation of Civil Rule 56.1 of the Local District Rules. The statement of material facts shall be sufficiently complete to permit the Court to render judgment on the claim or defense. *Compare* Local Bankruptcy Rule 7052-1 (Proposed Findings of Fact and Conclusions of Law).

 Subdivision (d) of this rule is new and is derived from Civil Rule 56.1 of the Local District Rules.

Rule 7087-1 TRANSFER OF ADVERSARY PROCEEDINGS

 Unless the Court orders otherwise, if an adversary proceeding is ordered transferred from this district, the Clerk, promptly after the expiration of 10 days from the date of entry of the order, shall mail to the court to which the case is transferred (i) certified copies of the Court's or District Court's opinion ordering the transfer, the order thereon, and the docket entries in the case, and (ii) the originals of all other papers on file in the adversary proceeding.

Comment

This rule is derived from Former Local Bankruptcy Rule 7 and is an adaptation of Civil Rule 83.1 of the Local District Rules.

This rule contemplates, among other things, that whenever the transfer of an adversary proceeding is ordered by a District Judge, the District Clerk will transmit the order of the District Judge to the Clerk of the Bankruptcy Court.

Transfers of cases are governed by Local Bankruptcy Rule 1014-1.

PART VIII APPEALS

Rule 8004-1 COPIES OF NOTICE OF APPEAL

Upon the filing of a notice of appeal, the appellant shall provide the Clerk with sufficient copies of the notice and address labels for all parties to be served to permit the Clerk to comply with Bankruptcy Rule 8004.

Comment

This rule is derived from Former Local Bankruptcy Rule 32.

Bankruptcy Rule 8004 requires the Clerk to mail a copy of a notice of appeal to "counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party's last known address." Although the appellant is required to provide address labels, envelopes should not be provided.

Rule 8005-1 SUPERSEDEAS BOND

(a) A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and such damages for delay as may be awarded, plus \$250 to cover costs.

(b) When the stay may be effected as of right solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the Court, on notice,

shall fix the amount of the bond. In all other cases, the Court may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.

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

Comment

This rule is derived from Former Local Bankruptcy Rule 30 and is an adaptation of Civil Rule 41 of the Former District Rules.

Rule 8007-1 RECORD ON APPEAL

(a) *Furnishing and Transmitting Record on Appeal.* Except as provided in subdivision (b) of this rule, a party filing a designation of items to be included in a record on appeal shall provide the Clerk with a copy of each item designated. The Clerk shall retain the original of each item designated and transmit to the District Clerk, as the record on appeal, copies of such items.

(b) *Documents of Unusual Bulk or Weight and Physical Exhibits.* Documents of unusual bulk or weight and physical exhibits shall remain in the custody of the attorney producing them, who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the appellate court.

Comment

Subdivision (a) of this rule is derived from former Standing Order M-93. Subdivision (b) of this rule is new and is derived from Civil Rule 24(c) of the Former District Rules.

Rule 8016-1 ORDER, JUDGMENT, OR REMAND BY APPELLATE COURT

An order or judgment of an appellate court, when filed in the office of the Clerk, shall automatically become the order or judgment of the Court and be entered as such by the Clerk without further order. If the order or judgment of the appellate court remands for further proceedings, a motion for such further proceedings shall be referred to the Judge who heard the proceeding below unless the appellate court orders otherwise.

Comment

This rule is derived from Former Local Bankruptcy Rule 31 and is an adaptation of Civil Rule 58.1 of the Local District Rules.

If a proceeding has been remanded by the appellate court, it is the responsibility of the parties to file a motion for further proceedings in the court to which it was remanded.

PART IX **GENERAL PROVISIONS**

Rule 9001-1 **DEFINITIONS**

(a) *Definitions.* Unless inconsistent with the context, in these Local Bankruptcy Rules --

(1) "*Bankruptcy Act*" means the Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (repealed 1978);

(2) "*Bankruptcy Code*" means title 11 of the United States Code, as amended from time to time;

(3) "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms promulgated pursuant to 28 U.S.C. § 2075, as amended from time to time;

(4) "*Chief Judge*" means the Chief Judge of the Court;

(5) "*Clerk*" means the clerk or deputy clerk of the Court;

(6) "*Court*" means the United States Bankruptcy Court for the Southern District of New York;

(7) "*District Clerk*" means the clerk or deputy clerk of the District Court;

(8) "*District Court*" means the United States District Court for the Southern District of New York;

(9) "*District Judge*" means a United States District Judge appointed to, or sitting by designation in, the District Court;

(10) *"Former District Rules"* means the Rules for General, Civil, Criminal, Admiralty and Magistrate Judge Proceedings for the United States District Court for the Southern District of New York, effective from October 26, 1983 through April 15, 1997;

(11) *"Former Local Bankruptcy Rules"* means the United States Bankruptcy Court Southern District of New York Local Bankruptcy Rules, effective from April 21, 1986 through April 10, 1996;

(12) *"Judge"* means a bankruptcy judge appointed to or sitting by designation in the Court (or, with respect to a proceeding that has not been referred or which has been withdrawn, the District Judge);

(13) *"Local District Rules"* means the Local Rules for the United States District Court for the Southern District of New York, as amended from time to time; and

(14) *"United States Trustee"* means the United States trustee or an assistant United States trustee for the Southern District of New York.

(b) *Construction.* Unless inconsistent with the context, the meanings of other words and phrases used in these Local Bankruptcy Rules shall be construed in accordance with the Bankruptcy Code and Bankruptcy Rules.

(c) *Use of Terms "Documents" and "Papers."* The terms "documents" and "papers" as used in these Local Bankruptcy Rules include those filed or transmitted by electronic means.

Comment

Subdivisions (a) and (b) of this rule are derived from Former Local Bankruptcy Rule 2. Subdivision (c) of this rule was added in 1996.

Rule 9004-1 FORM OF PAPERS

Unless the Court orders otherwise, papers submitted for filing shall (i) be plainly typed or printed, (ii) have no erasures or interlineations which materially deface them, and (iii) bear endorsed on the cover the name, the initials of the first and last name of the attorney followed by the last four digits of the attorney's social security number, the office and post office address, and the telephone number of the attorney for the filing party.

Comment

This rule is derived from Former Local Bankruptcy Rule 9(b) and is an adaptation of Civil Rule 11.1 of the Local District Rules.

The general rules for form of papers are set forth in Bankruptcy Rule 9004 and Official Bankruptcy Forms 16A, 16B, 16C, and 16D.

Rule 9004-2 CAPTION

(a) Papers submitted for filing shall bear the title of the case, the initials of the Judge to whom the case has been assigned, the docket number assigned to the case, and, if applicable, the adversary proceeding number.

(b) The return date and time of a motion shall be included in the upper right-hand corner of the caption of the motion and all related pleadings.

Comment

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 9. Subdivision (b) of this rule is derived from former Standing Order M-99.

The return date for a motion is obtained pursuant to Local Bankruptcy Rule 5070-1.

Rule 9006-1 TIME FOR SERVICE AND FILING OF MOTIONS AND ANSWERING PAPERS

(a) *Discovery-Related Motions.* Unless the Court orders otherwise, all motion papers under Bankruptcy Rules 7026 through 7037 shall be served at least five days before the return date. Where such service is made, any answering papers shall be served so as to ensure actual receipt not later than the day preceding the return date.

(b) *All Other Motions.* Unless the Court orders otherwise, all other motion papers shall be served at least 10 days before the return date. Where such service is made, any answering papers shall be served so as to ensure actual receipt not later than three days before the return date.

(c) *Time for Filing with Court.* Unless the Court orders otherwise, all motions and answering papers shall be filed with the Clerk not later than one business day following the date of service.

Comment

This rule is derived from Former Local Bankruptcy Rule 13(c) and is an adaptation of Civil Rule 6.1 of the Local District Rules. Subdivision (b) of this rule is an exercise of the Court's authority contained in Bankruptcy Rule 9006(d) to enlarge the time for service of motion papers.

Rule 9011-1 SIGNING OF PAPERS

(a) All pleadings, motions, and other papers that are submitted for filing shall be signed by an attorney of record in the attorney's own name or, if there is no attorney, by the party. The name of the attorney or party shall be clearly printed or typed below the signature, together with the attorney's or party's address and telephone number. If signed by an attorney, the initials of the attorney's first and last name followed by the last four digits of the attorney's social security number shall appear immediately after the attorney's name.

(b) The initials of the attorney's first and last name followed by the last four digits of the social security number of the attorney making an electronic filing shall constitute the signature of the attorney for purposes of Bankruptcy Rule 9011. An original signed copy of the filing shall be maintained in the attorney's files.

(c) Any password required for electronic filing shall be used only by the attorney to whom the password is assigned and authorized members and employees of such attorney's firm.

Comment

This rule is an adaptation of Civil Rule 11.1 of the Local District Rules.

Rule 9013-1 MOTION PRACTICE

(a) *Rule or Statutory Basis.* Each motion shall specify the rules and statutory provisions upon which it is predicated. If such specification has not been made, the Court may strike the motion from the calendar.

(b) *Memorandum of Law.* Unless the Court orders otherwise, the moving party shall serve and file with any motion (including a motion brought on by order to show cause) a memorandum of law setting forth the points and authorities relied on in support of the motion, divided under appropriate headings into as many parts as there are points to be determined. Unless the Court orders otherwise, each responding party shall serve and file with its papers in response to the motion an answering memorandum of law, similarly divided, setting forth the points and authorities relied on in response. Failure to comply with this subdivision may be deemed sufficient cause for the denial of the motion or the granting of the motion by default.

(c) *Entities to Receive Notice.* In addition to all entities otherwise entitled to receive notice, notice of a motion shall be given to any entity believed to have or be claiming an interest in the subject matter of the proposed order or who, it is believed, otherwise would be affected by the proposed order.

Comment

This rule is derived from Former Local Bankruptcy Rule 13.

Local Bankruptcy Rule 7007-1 provides additional requirements for discovery-related motion practice.

Rule 9014-1 CONTESTED MATTERS

Unless the Court orders otherwise, Rule 7(b) of the Federal Rules of Civil Procedure, as incorporated in Bankruptcy Rules 7007 and 7024 and Local Bankruptcy Rules 7005-1, 7007-1, 7016-1, 7024-1, 7026-1, 7026-2, 7027-1, 7030-1, 7030-2, 7031-1, 7033-1, 7033-2, 7034-1, 7034-2, 7036-1, 7036-2, 7052-1, 7055-1, 7055-2, and 7056-1, shall apply in contested matters.

Comment

This rule is an exercise of the Court's discretion under Bankruptcy Rule 9014 to make any rule in Part VII of the Bankruptcy Rules applicable to contested matters.

RULE 9015-1 JURY TRIALS

A statement of consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) shall be filed not later than 10 days after the service of the last pleading directed to the issue for which the demand was made.

Comment

This rule is new. Section 157(e) of title 28 provides that a bankruptcy judge may conduct a jury trial on proper demand with the consent of the parties to the proceeding. Bankruptcy Rule 9015(b) provides that the time for filing a statement of consent to a jury trial shall be specified by local rule.

This rule provides a 10 day period for filing the consent, which runs from the service of the last pleading, as specified in Bankruptcy Rule 7007, that is directed to the issue for which a jury trial is demanded.

Rule 9019-1 MEDIATION

Alternate dispute resolution shall be conducted in the manner required by any applicable standing order of the Court.

Comment

A copy of any applicable standing order may be obtained from the Clerk.

Rule 9020-1 DEFAULT SANCTIONS; IMPOSITION OF COSTS

(a) *Default Sanctions.* Failure of a party or counsel for a party to appear before the Court at a conference, complete the necessary preparations, or be prepared to proceed at the time set for trial or hearing may be considered an abandonment of the adversary proceeding or contested matter or a failure to prosecute or defend diligently, and an appropriate order of the Court may be entered against the defaulting party with respect to either a specific issue or the entire adversary proceeding or contested matter.

(b) *Imposition of Costs.* If the Judge finds that the sanctions in subdivision (a) of this rule are either inadequate or unjust to the parties, the Judge may assess reasonable costs directly against the party or counsel whose action has obstructed the effective administration of the Court's business.

Comment

This rule is derived from Former Local Bankruptcy Rule 21 and is an adaptation of General Rule 5(b) and (c) of the Former District Rules.

Rule 9021-1 ENTRY OF ORDERS, JUDGMENTS, AND DECREES

The Clerk shall enter all orders, decrees, and judgments of the Court in the electronic filing system, which shall constitute docketing of the order, decree, or judgment for all purposes. The Clerk's notation on the appropriate docket of an order, judgment, or decree shall constitute the entry of the order, judgment, or decree.

Comment

This rule is derived from Former Local Bankruptcy Rule 19(a) and is an adaptation of Civil Rule 6.2 of the Local District Rules.

This rule supplements Bankruptcy Rule 9021, which requires that a judgment in an adversary proceeding or contested matter be set forth on a separate document and entered on the docket.

Rule 9023-1 MOTIONS FOR REARGUMENT

(a) A motion for reargument shall be served within 10 days after the entry of the Court's determination of the original motion and, unless the Court orders otherwise, shall be made returnable within the same amount of time as required for the original motion. The motion shall set forth concisely the matters or controlling decisions which counsel believes the Court has not considered. No oral argument shall be heard unless the Court grants the motion and specifically orders that the matter be re-argued orally.

(b) The expense of any party in obtaining all or any part of a transcript for purposes of a new trial or for amended findings may be a cost taxable against the losing party.

Comment

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 13(j) and is an adaptation of Civil Rule 6.3 of the Local District Rules. Subdivision (b) of this rule is derived from Former

Local Bankruptcy Rule 33 and is an adaptation of Civil Rule 12 of the Former District Rules.

This rule does not apply to motions made under Bankruptcy Rule 3008 or 9024.

Rule 9025-1 SURETIES

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

(b) *Security for Bond.* Except as otherwise provided by law, every bond, undertaking, or stipulation shall be secured by (i) the deposit of cash or government bonds in the amount of the bond, undertaking, or stipulation, (ii) the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or (iii) the undertaking or guaranty of two individual residents of the Southern District or Eastern District of New York, each of whom owns real or personal property within such district with a value of twice the amount of the bond in excess of the surety's debts, liabilities, legal exemptions, and obligations on other bonds, guaranties, undertakings, or stipulations.

(c) *Affidavit by Individual Surety.* In the case of a bond, undertaking, or stipulation executed by individual sureties, each surety shall attach an affidavit of justification, giving the surety's full name, occupation, and residence and business addresses, and showing that the surety is not disqualified from acting as an individual surety under subdivision (d) of this rule.

(d) *Persons Who May Not Act as Sureties.* Members of the bar, administrative officers and employees of the Court, the marshal, and the marshal's deputies and assistants may not act as sureties in any pending case, adversary proceeding, or contested matter.

(e) *Approval of Bonds of Corporate Sureties.* Except as otherwise provided by §§ 303 and 322(b) of the Bankruptcy Code, Bankruptcy Rule 2010, and Local Bankruptcy Rule 8005-1, all bonds, undertakings, and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, where the amount of such bonds or undertakings has been fixed by a Judge, an order of the Court, a statute, or Local Bankruptcy Rule 8005-1, may be approved by the Clerk.

Comment

Subdivisions (a), (b), (c), and (d) of this rule are derived from Former Local Bankruptcy Rule 28 and are an adaptation of Civil Rule 65.1.1(a), (b), (d), and (e) of the Local District Rules. Subdivision (b) of this rule has been modified to conform to Civil Rule 65.1.1(b) of the Local District Rules. Subdivision (e) of this rule is derived from Former Local Bankruptcy Rule 29 and is an adaptation of Civil Rule 65.1.1(f) of the Local District Rules.

Rule 9028-1 ACTION IN ABSENCE OF ASSIGNED JUDGE

In the absence of an assigned Judge, any other Judge who is available may act temporarily in the absent Judge's place. To obtain the assistance of an available Judge, the parties shall communicate first with the chambers staff of the assigned Judge and, if chambers staff is unavailable, then with the Clerk.

Comment

This rule is derived from Former Local Bankruptcy Rule 6.

This rule is intended to assure that the business of the Court will not be impeded by the absence of an assigned Judge.

Rule 9070-1 COPIES OF FILED PAPERS

(a) *Copy for United States Trustee.* A hard copy of all papers filed with the Court, including those filed electronically, other than proofs of claim, shall be submitted to the Clerk for transmittal to the United States Trustee.

(b) *Chambers Copy.* A copy of all papers filed with the Court, other than proofs of claim, shall be marked "Chambers Copy" and delivered to the chambers of the assigned Judge on the same date as the papers are filed with the Clerk.

Comment

This rule is derived from Former Local Bankruptcy Rule 9(d) and (e).

Rule 9072-1 CUSTODY OF EXHIBITS

(a) *Retention by Attorney.* Unless the Court orders otherwise, exhibits shall not be filed with the Clerk, but shall be retained in the custody of the attorney who produced them in Court.

(b) *Removal of Exhibits from Court.* Exhibits that have been filed with the Clerk shall be removed by the party responsible for the exhibits (i) if no appeal has been taken, at the expiration of the time for taking an appeal, or (ii) if an appeal has been taken, within 30 days after the record on appeal has been returned to the Clerk. Parties failing to comply with this rule shall be notified by the Clerk to remove their exhibits, and, upon their failure to do so within 30 days of such notification, the Clerk may dispose of the exhibits.

Comment

This rule is derived from Former Local Bankruptcy Rule 27 and is an adaptation of Civil Rule 39.1 of the Local District Rules. Former subdivision (c) of this rule has been included, as modified, in Local Bankruptcy Rule 8007-1(b).

As used in this rule, "exhibits" includes trial exhibits admitted into evidence, in a case, adversary proceeding, or contested matter.

Rule 9074-1 SETTLEMENT OR PRESENTMENT OF ORDER, JUDGMENT, OR DECREE

(a) *Settlement of Order, Judgment, or Decree.* Unless the Court orders otherwise, if, following a hearing or decision, the Court directs a party to settle an order, judgment, or decree, the party, within 15 days of the issuance of the Court's ruling, shall deliver the proposed order, judgment, or decree directly to the Judge's chambers upon not less than two days' notice to all parties to the adversary proceeding or contested matter, except that such notice period shall not apply if all parties to the adversary proceeding or contested matter have consented in writing to the proposed order, judgment, or decree. Failure to settle an order, judgment, or decree within the 15 day period may result in the imposition of sanctions, including, without limitation, (i) dismissal for failure to prosecute or (ii) an award of attorney's fees. One day's notice is required of all counterproposals. Unless the Court orders otherwise, no proposed or counterproposed order, judgment, or decree settled pursuant to this rule shall form a part of the record of the case, adversary proceeding, or contested matter.

(b) *Notice of Presentment of Order in Lieu of Hearing Where Notice and a Hearing Are Not Required.*

(1) *Use.* If notice and a hearing are not required, and a motion is not mandatory, the form set forth in subdivision (b)(3) of this rule may be used for the submission of orders to the Court.

(2) *Notice.* Unless the Court orders otherwise, notice of the presentment of an order pursuant to this subdivision shall be filed with the Clerk, and a copy shall be delivered to the Judge's chambers and served upon the debtor, the trustee, each committee, the United States Trustee, all parties who have filed a notice of appearance and request for service of documents, and all other parties in interest on not less than three days' notice.

(3) *Form.* A notice of presentment of a proposed order shall be substantially in the following form:

(c) *Notice of Motion upon Presentment and Opportunity for Hearing with Respect to Certain Motions, Applications, and Objections.*

(1) *Use.* Where it is anticipated that a motion, application, or objection of a type set forth below will be uncontested, the motion, application, or objection may be made upon notice of presentment using the form set forth in subdivision (c)(4) of this rule:

(A) Motion to terminate the automatic stay in a chapter 13 case pursuant to § 362 of the Bankruptcy Code;

(B) Application to confirm a sale pursuant to Local Bankruptcy Rule 6004-1;

(C) Motion to extend the time to assume or reject a lease pursuant to § 365(d)(4) of the Bankruptcy Code;

(D) Motion for entry of a default judgment in an adversary proceeding pursuant to Bankruptcy Rule 7055 and Local Bankruptcy Rule 7055-2;

(E) Motion to extend the time to object to discharge or dischargeability pursuant to Bankruptcy Rule 4004 or 4007;

(F) Application to avoid a judicial lien that impairs an exemption pursuant to § 522(f) of the Bankruptcy Code;

(G) Application for an examination pursuant to Bankruptcy Rule 2004 to the extent that the application is not granted *ex parte*;

(H) Objection to a claim of exemption pursuant to Bankruptcy Rule 4003(b).

(2) *Notice.* Unless the Court orders otherwise, notice of the presentment of an order pursuant to this subdivision shall be filed with the Clerk and a copy shall be delivered to the Judge's chambers and served upon the debtor, the trustee, each committee, the United States Trustee, all parties who have filed a notice of appearance and request for service of documents, and all other parties in interest. The notice shall comport with the notice requirements under the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules.

(3) *Objection; Opportunity for a Hearing.* A written objection, if any, to the proposed order, together with proof of service, shall be filed with the Clerk and a courtesy copy shall be delivered to the Judge's chambers at least three days before the date of presentment. Unless

the Court orders otherwise, no hearing will be held absent the timely filing of an objection. If an objection has been timely filed, the Court will notify the moving and objecting parties of the date and time of any hearing.

(4) *Form.* A notice of presentment of a proposed order shall be substantially in the following form:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Presentment Date and Time:
[Insert date]
at 12:00 noon

-----X
:
:
[Caption of Case] : Chapter 11 Case No. _____
:
:
-----X

NOTICE OF PRESENTMENT OF [INSERT TITLE OF ORDER]
AND
OPPORTUNITY FOR HEARING

PLEASE TAKE NOTICE that upon the annexed [application, motion, or objection] of [insert name of applicant, movant, or objectant], the undersigned will present the attached proposed order to the Honorable [insert name], United States Bankruptcy Judge, for signature on [insert a date conforming to the notice requirements under applicable rules for the particular type of application, motion, or objection] at 12:00 noon.

PLEASE TAKE FURTHER NOTICE that unless a written objection to the proposed order, with proof of service, is filed with the Clerk of the Court and a courtesy copy is delivered to the Bankruptcy Judge's chambers at least three days before the date of presentment, there will not be a hearing and the order may be signed.

PLEASE TAKE FURTHER NOTICE that if a written objection is timely filed, the Court will notify the moving and objecting parties of the date and time of the hearing and of the moving party's obligation to notify all other parties entitled to receive notice. The moving and objecting parties are required to attend the hearing, and failure to attend in person or by counsel may result in relief being granted or denied upon default.

Dated: [place]
[date]

[insert signature block]

To: [insert names and addresses
of entities to receive notice]

Comment

Subdivision (a) of this rule, which is derived from Former Local Bankruptcy Rule 17 and is an adaptation of Civil Rule 77.1 of the Local District Rules, applies to the settlement of orders, judgments, and decrees following a hearing or decision. Subdivision (b) of this rule, which is derived from Former Local Bankruptcy Rule 46, applies in situations in which “notice and a hearing” are not required by the Bankruptcy Code. Subdivision (c) of this rule, which is new and is an adaptation of former Standing Order 186, applies only to the types of proceedings specified therein and where it is anticipated that the relief requested will be uncontested.

A motion is mandatory if required by the Bankruptcy Rules, the Local Bankruptcy Rules, or an order of the Court.

Times for the presentment of and objections to proposed orders are specified in this rule to promote uniformity in practice. If notice of presentment is given by mail, three additional days must be added in accordance with Bankruptcy Rule 9006(f).

Rule 9075-1 REQUEST FOR HEARING

An objection to a proposed action or order shall constitute a request for a hearing.

Comment

This rule is derived from Former Local Bankruptcy Rules 13(i) and 45.

Rule 9076-1 STATUS CONFERENCES

(a) *In General.* Subject to the notice provisions of subdivision (c) of this rule, the Court, on its own motion or on request of a party in interest, may hold a conference, with or without a court reporter present, at any time during a case or proceeding, for any purpose consistent with the Bankruptcy Code, including:

- (1) to address the posture and efficient administration of the case or proceeding; and
- (2) to establish a case management or scheduling order.

(b) *Request for Conference.* A request for a conference may be made either in writing or orally at a hearing. Any request, whether written or oral, shall (i) specify the matters proposed to be addressed at the conference, (ii) identify the parties who have a direct interest in such matters, and (iii) include such further information as may assist the Court in evaluating whether a conference should be held and in conducting the conference. If a conference is requested for a date prior to the appointment of a creditors' committee and the retention of its counsel, the requesting party shall state why the conference should not be delayed until after the appointment and retention. If made in writing, the request shall be directed to the chambers of the Judge presiding over the case or proceeding and served, together with a copy of any papers submitted with the request, upon the following parties:

- (1) in an adversary proceeding, to the parties to the adversary proceeding;

or

- (2) in a case or proceeding other than an adversary proceeding, to the debtor, the trustee, the United States Trustee, each official committee appointed to serve in the case (or, if no official committee has been appointed, the holders of the 10 largest unsecured claims), the holders of the five largest secured claims, and each unofficial committee which previously has requested the opportunity to participate in conferences.

(c) *Notice of Conference.* If all necessary parties are present before the Court, the Judge may direct that a conference be held immediately without further notice. In the event that a conference is called under any other circumstances, unless the Court orders otherwise, as soon as practicable, the requesting party (or, if the conference is to be held on the Court's own motion, the debtor, the trustee, or such other party as the Court may direct) shall provide notice of the time, date, place, and purpose of the conference, to the parties required to be served under subdivision (b) of this rule.

(d) *Submission of Proposed Case Management and Scheduling Orders.* If one of the purposes of the conference is to establish a case management or scheduling order, unless the Court orders otherwise, the party requesting the conference (or, if the conference is to be held on the Court's own motion, the debtor, the trustee, or such other party as the Court may direct) shall submit to the Court prior to the conference, on notice to all necessary parties (as identified in subdivision (b) of this rule), a proposed case management or scheduling order. The submitting party in good faith shall attempt to obtain the consent of all necessary parties (as identified in subdivision (b) of this rule) with respect to the form of the order and indicate to the Court whether such consent has been obtained.

Comment

This rule is an exercise of the Court's authority under § 105(d) of the Bankruptcy Code.

Rule 9077-1 ORDERS TO SHOW CAUSE; *EX PARTE* ORDERS

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

(b) *Ex Parte Orders.* No *ex parte* order in an adversary proceeding or contested matter shall be granted unless it is based upon an affidavit or motion showing cause for *ex parte* action as well as cause for the relief requested, and states whether a previous application for similar relief has been made.

Comment

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 13(d) and is an adaptation of Civil Rule 6.1(d) of the Local District Rules. Subdivision (b) of this rule is derived from Former Local Bankruptcy Rule 19(b).

Rule 9078-1 CERTIFICATE OF SERVICE

Unless the Court orders otherwise, any party serving a pleading or other document shall file proof of service by the earlier of (i) three days following the date of service, and (ii) the hearing date.

Comment

This rule is derived from Former Local Bankruptcy Rule 45(d).

Although Former Local Bankruptcy Rule 45(d) applied only to proofs of service of notices, this rule applies to proofs of service of all pleadings and documents. The general requirements for service of notices are contained in Local Bankruptcy Rule 2002-1.