



**EFFECTIVE**  
**December 1, 2009**

**REVISED: August 2, 2004**  
**October 17, 2005**  
**August 4, 2008**  
**December 1, 2009**

## TABLE OF CONTENTS

PART I	COMMENCEMENT OF CASE; PROCEEDINGS RELATING <u>TO PETITION AND ORDER FOR RELIEF</u> .....	1
Rule 1001-1	SHORT TITLE; APPLICABILITY.....	1
Rule 1002-1	FILING OF PETITION.....	2
Rule 1005-1	DEBTOR'S ADDRESS IN PETITION.....	2
Rule 1007-1	LIST OF CREDITORS AND EQUITY SECURITY HOLDERS..	2
Rule 1007-2	DEBTOR'S AFFIDAVIT AND PROPOSED CASE CONFERENCE ORDER TO BE FILED IN CHAPTER 11 CASES – <b>Amended [December 1, 2009]</b> .....	3
Rule 1007-3	CORPORATE OWNERSHIP STATEMENT TO BE FILED BY DEBTOR THAT IS A PARTNERSHIP OR JOINT VENTURE – <b>Amended [December 1, 2009]</b> .....	6
Rule 1009-1	NOTICE OF AMENDMENT OF SCHEDULES IN CHAPTER 11 CASES.....	7
Rule 1010-1	CORPORATE OWNERSHIP STATEMENT TO BE FILED IN AN INVOLUNTARY CASE BY EACH PETITIONER THAT IS A PARTNERSHIP OR JOINT VENTURE.....	7
Rule 1011-1	CORPORATE OWNERSHIP STATEMENT TO BE FILED BY A PARTNERSHIP OR JOINT VENTURE THAT IS A RESPONDENT TO AN INVOLUNTARY PETITION OR PETITION FOR RECOGNITION.....	7
Rule 1014-1	TRANSFER OF CASES.....	8
Rule 1020-1	SMALL BUSINESS ELECTION – <b>Repealed [October 17, 2005]</b> ....	8
Rule 1073-1	ASSIGNMENT OF CASES AND PROCEEDINGS.....	8
Rule 1074-1	CORPORATE RESOLUTION; PARTNERSHIP STATEMENT.....	9
PART II	OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; <u>EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS</u> .....	10
Rule 2002-1	NOTICE TO UNITED STATES TRUSTEE.....	10
Rule 2002-2	NOTICE OF PROPOSED ACTION OR ORDER WHEN NOT PROCEEDING BY MOTION – <b>Amended [December 1, 2009]</b> .....	10
Rule 2007.1-1	ELECTION OF TRUSTEE IN CHAPTER 11 CASES.....	12
Rule 2014-1	EMPLOYMENT OF PROFESSIONAL PERSONS.....	12
Rule 2015-1	STORAGE OF BOOKS AND RECORDS.....	12
Rule 2016-1	COMPENSATION OF PROFESSIONALS.....	12
Rule 2016-2	COMPENSATION OR REIMBURSEMENT OF EXPENSES IN CHAPTER 7 CASES – <b>Amended [December 1, 2009]</b> .....	13
Rule 2090-1	ADMISSION TO PRACTICE; WITHDRAWAL AS ATTORNEY OF RECORD.....	13

PART III	<u>CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS</u> .....	14
Rule 3003-1	REQUESTS FOR ORDERS ESTABLISHING DEADLINES FOR FILING CLAIMS IN CHAPTER 11 CASES.....	14
Rule 3008-1	RECONSIDERATION OF CLAIMS.....	15
Rule 3015-1	CHAPTER 13 PLANS: MODEL PLAN AND CONFIRMATION ORDER; TREATMENT OF DEBTOR'S ATTORNEY'S FEES AS ADMINISTRATIVE EXPENSE; SERVICE – <b>Amended [December 1, 2009]</b> .....	15
Rule 3015-2	MODIFICATION OF CHAPTER 13 PLAN BEFORE CONFIRMATION.....	15
Rule 3015-3	HEARING ON CONFIRMATION OF CHAPTER 13 PLAN....	16
Rule 3017-1	PROPOSED DISCLOSURE STATEMENTS IN CHAPTER 9 AND CHAPTER 11 CASES: TRANSMITTAL AND DISCLAIMER – <b>Amended [October 17, 2005]</b> .....	16
Rule 3018-1	CERTIFICATION OF ACCEPTANCE OR REJECTION OF PLANS IN CHAPTER 9 AND CHAPTER 11 CASES – <b>Amended [December 1, 2009]</b> .....	17
Rule 3018-2	ACCEPTANCES OR REJECTIONS OF PLAN OBTAINED BEFORE PETITION IN CHAPTER 9 AND CHAPTER 11 CASES.....	18
Rule 3019-1	MODIFICATION OF CHAPTER 11 PLAN BEFORE CLOSE OF VOTING.....	18
Rule 3020-1	TIME FOR OBJECTING TO CONFIRMATION IN CHAPTER 9 AND CHAPTER 11 CASES; WITHDRAWAL OF OBJECTIONS – <b>Amended [December 1, 2009]</b> .....	19
Rule 3021-1	POSTCONFIRMATION REQUIREMENTS IN CHAPTER 11 CASES – <b>Amended [December 1, 2009]</b> .....	19
Rule 3022-1	CLOSING REPORTS IN CHAPTER 11 CASES – <b>Amended [December 1,2009]</b> .....	21
PART IV	<u>THE DEBTOR: DUTIES AND BENEFITS</u> .....	23
Rule 4001-1	RELIEF FROM AUTOMATIC STAY – <b>Amended [August 4, 2008]</b> .....	23
Rule 4001-2	REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT – <b>Amended [December 1, 2009]</b> .....	28
Rule 4001-3	REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT – <b>Repealed [August 4, 2008]</b> .....	35
Rule 4002-1	DUTIES OF DEBTORS – PROCEDURES RELATING TO THE IMPLEMENTATION OF BANKRUPTCY CODE § 521.....	35

Rule 4003-1	EXEMPTIONS.....	35
Rule 4004-1	AUTOMATIC EXTENSION OF TIME TO FILE COMPLAINT OBJECTING TO DISCHARGE IN EVENT OF AMENDMENT.....	36
Rule 4007-1	AUTOMATIC EXTENSION OF TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT IN EVENT OF AMENDMENT.....	36
Rule 4007-2	WITHDRAWAL OR SETTLEMENT OF PROCEEDINGS TO DETERMINE DISCHARGE AND DISCHARGEABILITY.....	36
<b>PART V</b>	<b><u>COURTS AND CLERKS</u></b> .....	<b>37</b>
Rule 5001-1	CLERK'S OFFICE: HOURS; AFTER HOURS FILING – <b>Amended [December 1, 2009]</b> .....	37
Rule 5005-1	FILING PAPERS.....	37
Rule 5005-2	FILING BY ELECTRONIC MEANS.....	38
Rule 5009-1	FINAL REPORT AND ACCOUNT AND CLOSING REPORT IN A CHAPTER 7 CASE – <b>Amended [December 1, 2009]</b> .....	38
Rule 5010-1	REOPENING CASES.....	42
Rule 5011-1	WITHDRAWAL OF REFERENCE.....	42
Rule 5070-1	OBTAINING RETURN DATE.....	43
Rule 5073-1	PHOTOGRAPHING, BROADCASTING, AND TELEVISIONING IN COURTROOMS AND ENVIRONS.....	43
Rule 5075-1	CLERK'S USE OF OUTSIDE SERVICES AND AGENTS.....	43
Rule 5076-1	DEPOSIT FOR COURT REPORTING EXPENSES.....	44
Rule 5078-1	PAYMENT OF FEES.....	44
<b>PART VI</b>	<b><u>COLLECTION AND LIQUIDATION OF THE ESTATE</u></b> .....	<b>44</b>
Rule 6004-1	SALES OF PROPERTY, APPRAISALS, AND AUCTIONS – <b>Amended [December 1, 2009]</b> .....	44
Rule 6005-1	AUCTIONEERS – <b>Amended [December 1, 2009]</b> .....	48
Rule 6006-1	EXECUTORY CONTRACTS AND UNEXPIRED LEASES – <b>Amended [December 1, 2009]</b> .....	50
Rule 6007-1	ABANDONMENT OR DISPOSITION OF PROPERTY.....	52
<b>PART VII</b>	<b><u>ADVERSARY PROCEEDINGS</u></b> .....	<b>52</b>
Rule 7005-1	FILING OF DISCOVERY-RELATED DOCUMENTS.....	52
Rule 7007-1	DISCOVERY-RELATED MOTION PRACTICE.....	53

Rule 7007.1-1	CORPORATE OWNERSHIP STATEMENT TO BE FILED BY A PARTNERSHIP OR JOINT VENTURE THAT IS A PARTY TO AN ADVERSARY PROCEEDING – <b>Amended [December 1, 2009]</b> .....	53
Rule 7016-1	SUBMISSION OF MARKED PLEADINGS.....	54
Rule 7024-1	NOTICE OF CLAIM OF UNCONSTITUTIONALITY – <b>Repealed [August 4, 2008]</b> .....	54
Rule 7026-1	UNIFORM DEFINITIONS IN DISCOVERY REQUESTS.....	54
Rule 7026-2	OPT-OUT FROM CERTAIN PROVISIONS OF RULE 26 OF THE FEDERAL RULES OF CIVIL PROCEDURE – <b>Repealed [August 2, 2004]</b> .....	54
Rule 7027-1	DEPOSITIONS PRIOR TO COMMENCEMENT OF ADVERSARY PROCEEDING OR PENDING APPEAL WHEN DEPOSITION IS MORE THAN 100 MILES FROM COURTHOUSE.....	54
Rule 7030-1	DEPOSITIONS UPON ORAL EXAMINATION.....	55
Rule 7030-2	OPT-OUT FROM CERTAIN PROVISIONS OF RULE 30 OF THE FEDERAL RULES OF CIVIL PROCEDURE – <b>Repealed [August 2, 2004]</b> .....	55
Rule 7031-1	OPT-OUT FROM CERTAIN PROVISIONS OF RULE 31 OF THE FEDERAL RULES OF CIVIL PROCEDURE – <b>Repealed [August 2, 2004]</b> .....	55
Rule 7033-1	INTERROGATORIES – <b>Amended [December 1, 2009]</b> .....	55
Rule 7033-2	OPT-OUT FROM CERTAIN PROVISIONS OF RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE – <b>Repealed [August 2, 2004]</b> .....	57
Rule 7034-1	OBJECTIONS TO, AND REQUESTS FOR RELIEF WITH RESPECT TO, PRODUCTION OF DOCUMENTS.....	57
Rule 7034-2	OPT-OUT FROM CERTAIN PROVISIONS OF RULE 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE – <b>Repealed [August 2, 2004]</b> .....	58
Rule 7036-1	REQUESTS FOR ADMISSION.....	58
Rule 7036-2	OPT-OUT FROM CERTAIN PROVISIONS OF RULE 36 OF THE FEDERAL RULES OF CIVIL PROCEDURE – <b>Repealed [August 2, 2004]</b> .....	59
Rule 7052-1	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	59
Rule 7055-1	CERTIFICATE OF DEFAULT.....	59
Rule 7055-2	DEFAULT JUDGMENT.....	59
Rule 7056-1	SUMMARY JUDGMENT.....	60
Rule 7087-1	TRANSFER OF ADVERSARY PROCEEDINGS – <b>Repealed [August 2, 2004]</b> .....	61

PART VIII	<u>APPEALS</u> .....	61
Rule 8004-1	COPIES OF NOTICE OF APPEAL.....	61
Rule 8005-1	SUPERSEDEAS BOND.....	61
Rule 8007-1	RECORD ON APPEAL.....	62
Rule 8016-1	ORDER, JUDGMENT, OR REMAND BY APPELLATE COURT.....	62
PART IX	<u>GENERAL PROVISIONS</u> .....	62
Rule 9001-1	DEFINITIONS.....	62
Rule 9004-1	FORM OF PAPERS – <b>Amended [August 4, 2008]</b> .....	64
Rule 9004-2	CAPTION.....	65
Rule 9006-1	TIME FOR SERVICE AND FILING OF MOTIONS AND ANSWERING PAPERS – <b>Amended [December 1, 2009]</b> .....	65
Rule 9011-1	SIGNING OF PAPERS – <b>Amended [August 4, 2008]</b> .....	66
Rule 9013-1	MOTION PRACTICE – <b>Amended [August 4, 2008]</b> .....	67
Rule 9014-1	CONTESTED MATTERS.....	67
Rule 9014-2	FIRST SCHEDULED HEARING.....	67
Rule 9015-1	JURY TRIALS – <b>Amended [December 1, 2009]</b> .....	68
Rule 9019-1	ALTERNATIVE DISPUTE RESOLUTION.....	69
Rule 9020-1	DEFAULT SANCTIONS; IMPOSITION OF COSTS.....	69
Rule 9021-1	ENTRY OF ORDERS, JUDGMENTS, AND DECREES – <b>Amended [December 1, 2009]</b> .....	70
Rule 9023-1	MOTIONS FOR REARGUMENT – <b>Amended [December 1, 2009]</b> .....	70
Rule 9025-1	SURETIES.....	71
Rule 9028-1	ACTION IN ABSENCE OF ASSIGNED JUDGE.....	71
Rule 9070-1	COPIES OF FILED PAPERS – <b>Amended [December 1, 2009]</b> .....	72
Rule 9072-1	CUSTODY OF EXHIBITS.....	72
Rule 9074-1	SUBMISSION, SETTLEMENT OR PRESENTMENT OF ORDER, JUDGMENT, OR DECREE – <b>Amended [December 1, 2009]</b> .....	73
Rule 9075-1	REQUEST FOR HEARING.....	77
Rule 9076-1	STATUS CONFERENCES.....	78
Rule 9077-1	ORDERS TO SHOW CAUSE; <i>EX PARTE</i> ORDERS.....	79
Rule 9078-1	CERTIFICATE OF SERVICE.....	79

**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**

- Rules."            (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 and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

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. Procedures for filing by electronic means are governed by General Order M-242 and any amendments or supplemental standing orders of the Court. Copies of General Order M-242, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**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**

Filing requirements with respect to lists, statements, and schedules are governed by General Order M-192 and any amendments or supplemental standing orders of the Court. Copies of General Order M-192, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**DEBTOR'S AFFIDAVIT AND PROPOSED CASE CONFERENCE  
ORDER TO BE FILED IN CHAPTER 11 CASES – Amended [December 1,  
2009]**

- (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) 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 14 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] [355 Main Street, Poughkeepsie, New York 12601] [300 Quarropas Street, White Plains, New York 10601] 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.

Subdivision (c) of this rule was amended in 2009 to change the time period from 15 to 14 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

**Rule 1007-3                    CORPORATE OWNERSHIP STATEMENT TO BE FILED BY  
DEBTOR THAT IS A PARTNERSHIP OR JOINT VENTURE –  
Amended [December 1, 2009]**

The Corporate Ownership Statement required to be filed by the debtor with the petition under Bankruptcy Rule 1007(a)(1) shall also be filed by any debtor that is a general or limited partnership or joint venture. In addition to the information required under Bankruptcy Rule 7007.1, the statement shall include the name and address of any corporation whose securities are publicly traded in which the debtor directly or indirectly owns 10% or more of any class of the corporation's equity interests, and any general or limited partnership or joint venture in which the debtor owns an interest.

## **Comment**

Bankruptcy Rule 1007(a), as amended effective December 1, 2003, requires a Corporate Ownership Statement containing the information described in Bankruptcy Rule 7007.1 to be filed by the debtor with the petition. Bankruptcy Rule 1007(a), however, only refers to a debtor that is a corporation. "Corporation" is broadly defined under § 101(9) of the Bankruptcy Code (and includes, among other entities, limited liability companies and other unincorporated companies or associations), but it does not cover general or limited partnerships. The reasons for which this rule was enacted – to give the Judges of this Court information by which they can determine whether or not they need to recuse themselves in a particular case – apply equally with respect to debtors that are general and limited partnerships, and joint ventures. This local rule requires a similar disclosure with respect to business organizations of that character.

The heading of this rule was amended in 2009 to more accurately reflect the substance of the rule.

**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 1010-1****CORPORATE OWNERSHIP STATEMENT TO BE FILED IN AN INVOLUNTARY CASE BY EACH PETITIONER THAT IS A PARTNERSHIP OR JOINT VENTURE**

The Corporate Ownership Statement required to be filed under Bankruptcy Rule 1010(b) by each petitioner that is a corporation shall also be filed by each petitioner that is a general or limited partnership or joint venture.

**Comment**

Bankruptcy Rule 1010(b), which became effective on December 1, 2008, requires a Corporate Ownership Statement containing the information described in Bankruptcy Rule 7007.1 to be filed by each petitioner that is a corporation. Bankruptcy Rule 1010(b), however, only refers to a petitioner that is a corporation. "Corporation" is broadly defined under § 101(9) of the Bankruptcy Code (and includes, among other entities, limited liability companies and other unincorporated companies or associations), but it does not cover general or limited partnerships. The reasons for which this rule was enacted – to give the Judges of this Court information by which they can determine whether or not they need to recuse themselves in a particular case – apply equally with respect to petitioners that are general and limited partnerships, and joint ventures. This local rule requires a similar disclosure with respect to business organizations of that character.

**Rule 1011-1****CORPORATE OWNERSHIP STATEMENT TO BE FILED BY A PARTNERSHIP OR JOINT VENTURE THAT IS A RESPONDENT TO AN INVOLUNTARY PETITION OR PETITION FOR RECOGNITION**

The Corporate Ownership Statement required to be filed under Bankruptcy Rule 1011(f) by a corporation responding to an involuntary petition or a petition for recognition of a foreign proceeding shall also be filed by any entity responding to an involuntary petition or a petition for recognition of a foreign proceeding that is a general or limited partnership or joint venture. If the responding entity is the debtor, in addition to the information required under Bankruptcy Rule 7007.1, the statement shall include the information described in Bankruptcy Rule 1007-3.

## **Comment**

Bankruptcy Rule 1011(f), which became effective on December 1, 2008, requires a Corporate Ownership Statement containing the information described in Bankruptcy Rule 7007.1 to be filed by any corporation responding to an involuntary petition or a petition for recognition of a foreign proceeding. "Corporation" is broadly defined under § 101(9) of the Bankruptcy Code (and includes, among other entities, limited liability companies and other unincorporated companies or associations), but it does not cover general or limited partnerships. The reasons for which this rule was enacted – to give the Judges of this Court information by which they can determine whether or not they need to recuse themselves in a particular case - apply equally with respect to responding entities that are general and limited partnerships, and joint ventures. This local rule requires a similar disclosure with respect to business organizations of that character. If the responding entity is the debtor, the additional information described in the second sentence of Local Bankruptcy Rule 1007-3 must be included.

### **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 – Repealed [October 17, 2005]**

### **Rule 1073-1                    ASSIGNMENT OF CASES AND PROCEEDINGS**

(a)                    *Cases.* Where the street address of the debtor set forth on the petition is in (i) New York County or Bronx County, the Clerk shall assign the case to a Judge sitting in New York County; (ii) Rockland County or Westchester County, the Clerk shall assign the case to a Judge sitting in Westchester County; or (iii) Dutchess County, Orange County, Putnam County, or Sullivan County, the Clerk shall assign the case to a Judge sitting in Dutchess County. No case assignment will be based upon a post office box address. 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) *Cases Involving Affiliates.* Cases involving debtors that are 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. This rule was amended in 2004 to eliminate the use of a post office box address as the basis for case assignment.

## **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 requires 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 – Amended [December 1, 2009]**

(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 21 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 seven days prior to the date set for the hearing if at least 21 days' notice has been given and (ii) at least one day prior to the date set for the hearing if at least seven (but less than 21) 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.

Subdivisions (b) and (d) of this rule were amended in 2009 to change the 20-day time periods to 21 days. The purpose of the amendment was to conform the time periods in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The three-day deadline in subdivision (d) of this rule was amended to seven days in 2009 to give parties more time to consider objections before the hearing.

**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 General Order M-389 and any amendments or supplemental standing orders of the Court. Copies of General Order M-389, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

### **Rule 2016-2                    COMPENSATION OR REIMBURSEMENT OF EXPENSES IN CHAPTER 7 CASES – Amended [December 1, 2009]**

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 21 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 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.

This rule was amended in 2009 to change the relevant time period from 20 to 21 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The two business day deadline in this rule was also amended in 2009 to delete the reference to “business” days so that the time period will be computed by calendar days, consistent with the 2009 amendments to Bankruptcy Rule 9006(a).

### **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) *Repealed.*

(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.

(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.* Rule 2090-1 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 (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 (c) of this rule, requiring a local address for service, was repealed in 2004 because it could have been construed to require retention of local counsel when the attorney for the debtor or for a petitioning creditor does not have an office located in the district.

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

### **Rule 3003-1      REQUESTS FOR ORDERS ESTABLISHING DEADLINES FOR FILING CLAIMS IN CHAPTER 11 CASES**

A request for an order establishing a deadline for filing proofs of claim in a chapter 11 case shall conform to procedural guidelines for requests for bar orders contained in any applicable standing order issued by the Court.

### **Comment**

Procedures for requesting deadlines for filing claims, traditionally known as “bar dates,” are governed by General Order M-386 and any amendments or supplemental standing orders of the Court. Copies of General Order M-386, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available

on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**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: MODEL PLAN AND CONFIRMATION ORDER; TREATMENT OF DEBTOR'S ATTORNEY'S FEES AS ADMINISTRATIVE EXPENSES; SERVICE – Amended [December 1, 2009]**

(a) *Model Plan and Confirmation Order.* In a chapter 13 case, the plan shall conform to the model Chapter 13 Plan and the confirmation order shall conform to the model Confirmation Order as required by any applicable standing order issued by the Court.

(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 adoption of a model Chapter 13 Plan and model Confirmation Order is governed by General Order M-384 and any amendments or supplemental standing orders of the Court. Copies of General Order M-384, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**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 – Amended [October 17, 2005]**

(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 is 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 is 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 IS 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 – Amended  
[December 1, 2009]**

(a)                    *Certification of Vote.* At least seven 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 seven 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.

Subdivisions (a) and (b) of this rule were amended in 2009 to change the time periods from five to seven days. The purpose of the amendment was to conform the time periods in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

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

A party seeking to obtain confirmation of any plan proposed and accepted before the commencement of a chapter 11 case shall comply with procedural guidelines for prepackaged chapter 11 cases contained in any applicable standing order issued by the Court.

**Comment**

Procedures with respect to prepackaged chapter 11 plans are governed by General Order M-387 and any further amendments or supplemental standing orders of the Court. Copies of General Orders M-387, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). This rule was amended in 2004 to delete the reference to chapter 9 because there are no General Orders governing prepackaged chapter 9 cases.

**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 – Amended [December 1, 2009]**

(a)                    *Objections to Confirmation.* Unless the Court orders otherwise, objections to confirmation of a plan shall be filed not later than seven 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.

The three-day deadline in subdivision (a) of this rule was amended to seven days in 2009 to give the Court and the parties more time to consider objections before the confirmation hearing.

**Rule 3021-1**                    **POSTCONFIRMATION REQUIREMENTS IN CHAPTER 11 CASES – Amended [December 1, 2009]**

(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)                    *Repealed.*

(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 responsibility of [INSERT NAME OF DEBTOR] (the "Debtor") 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) Closing Report and Final Decree. Within 14 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.
- (4) Case Closing. The Responsible Party shall submit the information described in paragraph 3 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  
\_\_\_\_\_, \_\_\_\_\_

**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. This rule was amended in 2004 to repeal subdivision (b) and delete paragraph (3) of the form Postconfirmation Order and Notice contained in subdivision (c), each of which related to the postconfirmation requirement to pay to the Clerk any special charges that may be assessed by the Court. The Court no longer assesses such charges.

Paragraph (3) of the form Postconfirmation Order and Notice contained in subdivision (c) of this rule was amended in 2009 to change the time period from 15 to 14 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

**Rule 3022-1                    CLOSING REPORTS IN CHAPTER 11 CASES – Amended [December 1, 2009]**

Unless the Court orders otherwise, within 14 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.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

CLOSING REPORT IN CHAPTER 11 CASE

To the best of my knowledge and belief, the following is a breakdown in this case:

FEES AND EXPENSES (from case inception):

\_\_\_\_\_ FEE for ATTORNEY for DEBTOR

\_\_\_\_\_ OTHER PROFESSIONAL FEES and ALL EXPENSES

\_\_\_\_\_ TRUSTEE FEE (if applicable)

\_\_\_\_\_ FEE FOR ATTORNEY for TRUSTEE (if applicable)

\_\_\_\_\_ % DIVIDEND PAID/TO BE PAID

\_\_\_\_\_ FUTURE DIVIDENDS (check if % of future dividend  
under plan not yet determinable)

STEPS TAKEN TO CONSUMMATE PLAN:

\_\_\_\_\_ Initial distribution under the plan completed

\_\_\_\_\_ Other: (explain)

DATE:

APPLICANT

BY \_\_\_\_\_

## **Comment**

This rule was amended in 2009 to change the time period from 15 to 14 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

### **PART IV      THE DEBTOR: DUTIES AND BENEFITS**

#### **Rule 4001-1              RELIEF FROM AUTOMATIC STAY – Amended [August 4, 2008]**

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

(b)      If the debtor is an individual, the motion shall be supported by an affidavit, based on personal knowledge, attesting to the circumstances of any default with respect to an obligation related to the motion.

(c)      If the debtor is an individual, a party moving for relief from the automatic stay under § 362 of the Bankruptcy Code relating to a mortgage on real property or a security interest in a cooperative apartment shall file, as an exhibit to the motion, a completed copy of the following form. Compliance with this subdivision shall constitute compliance with subdivision (b) of this rule.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

X

<CASE CAPTION>

CASE NO. \_\_\_ - \_\_\_ (\_\_\_)

X

RELIEF FROM STAY – REAL ESTATE AND  
COOPERATIVE APARTMENTS

I, \_\_\_\_\_ <NAME AND TITLE> OF \_\_\_\_\_ <NAME OF ORGANIZATION/CORPORATION/MOVING PARTY> (HEREINAFTER, “MOVANT”), HEREBY DECLARE (OR CERTIFY, VERIFY, OR STATE):

**BACKGROUND INFORMATION**

1. REAL PROPERTY OR COOPERATIVE APARTMENT ADDRESS WHICH IS THE SUBJECT OF THIS MOTION: \_\_\_\_\_

\_\_\_\_\_

2. LENDER NAME: \_\_\_\_\_

3. DATE OF MORTGAGE <MM/DD/YYYY>: \_\_\_\_\_

\_\_\_\_\_

4. POST-PETITION PAYMENT ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_

**DEBT/VALUE REPRESENTATIONS**

5. TOTAL PRE-PETITION AND POST-PETITION INDEBTEDNESS OF DEBTOR(S) TO MOVANT AT THE TIME OF FILING THE MOTION: \$ \_\_\_\_\_ (Note: this amount may not be relied on as a “payoff” quotation.)

6. MOVANT'S ESTIMATED MARKET VALUE OF THE REAL PROPERTY OR COOPERATIVE APARTMENT: \$ \_\_\_\_\_

7. SOURCE OF ESTIMATED VALUATION: \_\_\_\_\_

**STATUS OF DEBT AS OF  
THE PETITION DATE**

8. TOTAL PRE-PETITION INDEBTEDNESS OF DEBTOR(S) TO MOVANT AS OF PETITION FILING DATE: \$ \_\_\_\_\_

A. AMOUNT OF PRINCIPAL: \$ \_\_\_\_\_

B. AMOUNT OF INTEREST: \$ \_\_\_\_\_

C. AMOUNT OF ESCROW (TAXES AND INSURANCE): \$ \_\_\_\_\_

D. AMOUNT OF FORCED PLACED INSURANCE EXPENDED BY MOVANT: \$ \_\_\_\_\_

E. AMOUNT OF ATTORNEYS' FEES BILLED TO DEBTOR(S) PRE-PETITION: \$ \_\_\_\_\_

F. AMOUNT OF PRE-PETITION LATE FEES, IF ANY, BILLED TO DEBTOR(S): \$ \_\_\_\_\_

9. CONTRACTUAL INTEREST RATE: \_\_\_\_\_ (If interest rate is (or was) adjustable, please list the rate(s) and date(s) the rate(s) was/were in effect on a separate sheet and attach the sheet as an exhibit to this form; please list the exhibit number here: \_\_\_\_.)

10. PLEASE EXPLAIN ANY ADDITIONAL PRE-PETITION FEES, CHARGES OR AMOUNTS CHARGED TO DEBTOR'S/DEBTORS' ACCOUNT AND NOT LISTED ABOVE:

(If additional space is needed, please list the amounts on a separate sheet and attach the sheet as an exhibit to this form; please list the exhibit number here: \_\_\_\_.)

**AMOUNT OF ALLEGED POST-PETITION DEFAULT  
(AS OF \_\_\_\_\_ <MM/DD/YYYY>)**

11. DATE LAST PAYMENT WAS RECEIVED: \_\_\_\_\_ <MM/DD/YYYY>

12. A ALLEGED TOTAL NUMBER OF PAYMENTS DUE POST-PETITION FROM FILING OF PETITION THROUGH PAYMENT DUE ON \_\_\_\_\_ < MM/DD/YYYY >: \_\_\_\_\_.

13. P PLEASE LIST ALL POST-PETITION PAYMENTS ALLEGED TO BE IN DEFAULT:

ALLEGED PAYMENT DUE DATE	ALLEGED AMOUNT DUE	AMOUNT RECEIVED	AMOUNT APPLIED TO PRINCIPAL	AMOUNT APPLIED TO INTEREST	AMOUNT APPLIED TO ESCROW	LATE FEE CHARGED (IF ANY)
TOTALS:	\$	\$	\$	\$	\$	\$

14. A AMOUNT OF MOVANT’S ATTORNEYS’ FEES BILLED TO DEBTOR FOR THE PREPARATION, FILING AND PROSECUTION OF THIS MOTION: \$ \_\_\_\_\_

15. A AMOUNT OF MOVANT’S FILING FEE FOR THIS MOTION: \$ \_\_\_\_\_

16. O THER ATTORNEYS’ FEES BILLED TO DEBTOR POST-PETITION: \$ \_\_\_\_\_

17. A AMOUNT OF MOVANT’S POST-PETITION INSPECTION FEES: \$ \_\_\_\_\_

18. A AMOUNT OF MOVANT’S POST-PETITION APPRAISAL/BROKER’S PRICE OPINION: \$ \_\_\_\_\_

19. AMOUNT OF FORCED PLACED INSURANCE OR INSURANCE PROVIDED BY THE MOVANT POST-PETITION: \$ \_\_\_\_\_

20. S AMOUNT HELD IN SUSPENSE BY MOVANT IN CONNECTION WITH THIS CONTRACT, IF APPLICABLE: \$ \_\_\_\_\_

21. AMOUNT OF OTHER POST-PETITION ADVANCES OR CHARGES, FOR EXAMPLE TAXES, INSURANCE INCURRED BY DEBTOR ETC.: \$ \_\_\_\_\_

**REQUIRED ATTACHMENTS TO MOTION**

Please attach the following documents to this motion and indicate the exhibit number associated with the documents.

- (1) Copies of documents that indicate Movant’s interest in the subject property. For purposes of example only, a complete and legible copy of the promissory note or other debt instrument together with a complete and legible copy of the mortgage and any assignments in the chain from the original mortgagee to the current moving part y. (Exhibit \_\_\_\_.)
- (2) Copies of documents establishing proof of standing to bring this Motion. (Exhibit \_\_\_\_.)
- (3) Copies of documents establishing that Movant’s interest in the real property or cooperative apartment was perfected. For the purposes of example only, a complete and legible copy of the Financing Statement (UCC-1) filed with either the Clerk’s Office or the Register of the county the property or cooperative apartment is located in. (Exhibit \_\_\_\_.)

**CERTIFICATION FOR BUSINESS RECORDS**

I CERTIFY THAT THE INFORMATION PROVIDED IN THIS FORM AND/OR ANY EXHIBITS ATTACHED TO THIS FORM (OTHER THAN THE TRANSACTIONAL DOCUMENTS ATTACHED AS REQUIRED BY PARAGRAPHS 1, 2 AND 3, IMMEDIATELY ABOVE) IS DERIVED FROM RECORDS THAT WERE MADE AT OR NEAR THE TIME OF THE OCCURRENCE OF THE MATTERS SET FORTH BY, OR FROM INFORMATION TRANSMITTED BY, A PERSON WITH KNOWLEDGE OF THOSE MATTERS, WERE KEPT IN THE COURSE OF THE REGULARLY CONDUCTED ACTIVITY; AND WERE MADE BY THE REGULARLY CONDUCTED ACTIVITY AS A REGULAR PRACTICE.

I FURTHER CERTIFY THAT COPIES OF ANY TRANSACTIONAL DOCUMENTS ATTACHED TO THIS FORM AS REQUIRED BY PARAGRAPHS 1, 2 AND 3, IMMEDIATELY ABOVE, ARE TRUE AND ACCURATE COPIES OF THE ORIGINAL DOCUMENTS. I FURTHER CERTIFY THAT THE ORIGINAL DOCUMENTS ARE IN MOVANT’S POSSESSION, EXCEPT AS FOLLOWS: \_\_\_\_\_.

**DECLARATION**

I, \_\_\_\_\_ <NAME AND TITLE> OF \_\_\_\_\_ <NAME OF MOVANT>, HEREBY DECLARE (OR CERTIFY, VERIFY, OR STATE) PURSUANT TO 28 U.S.C. SECTION 1746 UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT BASED ON PERSONAL KNOWLEDGE OF THE MOVANT’S BOOKS AND BUSINESS RECORDS. EXECUTED AT \_\_\_\_\_ <CITY/TOWN>, \_\_\_\_\_ <STATE> ON THIS \_\_\_\_ DAY OF <MONTH>, 20\_\_ <YEAR>.

\_\_\_\_\_  
<PRINT NAME>

<TITLE>

<MOVANT>

<STREET ADDRESS>

<CITY, STATE AND ZIP CODE>

## 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.

Subdivision (a) of this rule was amended in 2004 to put the burden of obtaining a timely return date on the movant. It does not attempt to deal with the ramifications of the movant's failure to comply with the rule.

Subdivision (b) of this rule was added in 2004 to assure the Court of the accuracy of allegations of default in cases concerning an individual debtor.

Subdivision (c) of this rule, which derives from General Order M-346 as amended by General Order M-347, was added in 2008 to assure the Court of the accuracy of allegations of default in proceedings relating to a mortgage on real property or a security interest in a cooperative apartment of an individual debtor. The Court may direct the submission of the form set forth in subdivision (c) of this rule in connection with other motions, including motions for adequate protection.

### **Rule 4001-2                    REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT – Amended [December 1, 2009]**

(a) *Contents of Motion.* The following provisions, to the extent applicable, are added to the enumerated lists of material provisions set forth in Bankruptcy Rule 4001(b)(1)(B), (c)(1)(B), and (d)(1)(B):

- (1) the amount of cash collateral the party seeks permission to use or the amount of credit the party seeks to obtain, including any committed amount or the existence of a borrowing base formula and the estimated availability under the formula;
- (2) material conditions to closing and borrowing, including budget provisions;
- (3) pricing and economic terms, including letter of credit fees, commitment fees, any other fees, and the treatment of costs and expenses of the lender, any agent for the lender, and their respective professionals;
- (4) any effect on existing liens of the granting of collateral or adequate protection provided to the lender and any priority or superpriority provisions;

- (5) any carve-outs from liens or superpriorities;
- (6) any cross-collateralization provision that elevates prepetition debt to administrative expense (or higher) status or that secures prepetition debt with liens on postpetition assets (which liens the creditor would not otherwise have by virtue of the prepetition security agreement or applicable law);
- (7) any roll-up provision which applies the proceeds of postpetition financing to pay, in whole or in part, prepetition debt or which otherwise has the effect of converting prepetition debt to postpetition debt;
- (8) any provision that would limit the Court's power or discretion in a material way, or would interfere with the exercise of the fiduciary duties, or restrict the rights and powers, of the trustee, debtor in possession, or a committee appointed under § 1102 or § 1114 of the Bankruptcy Code, or any other fiduciary of the estate, in connection with the operation, financing, use or sale of the business or property of the estate, but excluding any agreement to repay postpetition financing in connection with a plan or to waive any right to incur liens that prime or are pari passu with liens granted under § 364;
- (9) any limitation on the lender's obligation to fund certain activities of the trustee, debtor in possession, or a committee appointed under § 1102 or § 1114 of the Bankruptcy Code;
- (10) termination or default provisions, including events of default, any effect of termination or default on the automatic stay or the lender's ability to enforce remedies, any cross-default provision, and any terms that provide that the use of cash collateral or the availability of credit will cease on (i) the filing of a challenge to the lender's prepetition lien or the lender's prepetition claim based on the lender's prepetition conduct; (ii) entry of an order granting relief from the automatic stay other than an order granting relief from the stay with respect to material assets; (iii) the grant of a change of venue with respect to the case or any adversary proceeding; (iv) management changes or the departure, from the debtor, of any identified employees; (v) the expiration of a specified time for filing a plan; or (vi) the making of a motion by a party in interest seeking any relief (as distinct from an order granting such relief);
- (11) any change-of-control provisions;
- (12) any provision establishing a deadline for, or otherwise requiring, the sale of property of the estate;
- (13) any provision that affects the debtor's right or ability to repay the financing in full during the course of the chapter 11 reorganization case;
- (14) in jointly administered cases, terms that govern the joint liability of debtors including any provision described in subdivision (e) of this rule; and

- (15) any provision for the funding of non-debtor affiliates with cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding.

(b) *Disclosure of Efforts to Obtain Financing and Good Faith.* A motion for authority to obtain credit shall describe in general terms the efforts of the trustee or debtor in possession to obtain financing, the basis on which the debtor determined that the proposed financing is on the best terms available, and material facts bearing on the issue of whether the extension of credit is being extended in good faith.

- (c) *Inadequacy of Notice After Event of Default.*

- (1) If the proposed order contains a provision that modifies or terminates the automatic stay or permits the lender to enforce remedies after an event of default, either the proposed order shall require at least seven days' notice to the trustee or debtor in possession, the United States Trustee and each committee appointed under § 1102 or § 1114 of the Bankruptcy Code (or the largest creditors if no committee has been appointed under § 1102 of the Bankruptcy Code), before the modification or termination of the automatic stay or the enforcement of the lender's remedies, or the motion shall explain why such notice provision is not contained in the proposed order.
- (2) If the proposed order contains a provision that terminates the use of cash collateral, either the proposed order shall require at least five days' notice before the use of cash collateral ceases (provided that the use of cash collateral conforms to any budget in effect) or the motion shall explain why such notice provision is not contained in the proposed order.

(d) *Carve-Outs.* Any provision in a motion or proposed order relating to a carve-out from liens or superpriorities shall disclose when a carve-out takes effect, whether it remains unaltered after payment of interim fees made before an event of default, and any effect of the carve-out on any borrowing base or borrowing availability under the postpetition loan. If a provision relating to a carve-out provides disparate treatment for the professionals retained by a committee appointed under § 1102 or § 1114 of the Bankruptcy Code, when compared with the treatment for professionals retained by the trustee or debtor in possession, or if the carve-out does not include fees payable to either the Bankruptcy Court or the United States Trustee, reasonable expenses of committee members (excluding fees and expenses of professionals employed by such committee members individually), and reasonable post-conversion fees and expenses of a chapter 7 trustee, or if a carve-out does not include the costs of investigating whether any claims or causes of action against the lender exist, there shall be disclosure thereof under subdivision (a) of this Local Rule and the motion shall contain a detailed explanation of the reasons therefor.

(e) *Joint Obligations.* In jointly-administered cases, if one or more debtors will be liable for the repayment of indebtedness for funds advanced to or for the benefit of another debtor, the motion and the proposed order shall describe, with specificity, any provisions of the agreement or proposed order that would affect the nature and priority, if any, of any interdebtor claims that would result if a debtor were to repay debt incurred by or for the benefit of another debtor.

(f) *Investigation Period Relating to Waivers and Concessions as to Prepetition Debt.*

If a motion seeks entry of an order in which the debtor stipulates, acknowledges or otherwise admits to the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim, either the proposed order shall include a provision that permits a committee appointed under § 1102 of the Bankruptcy Code and other parties in interest to undertake an investigation of the facts relating thereto, and proceedings relating to such determination, or the motion shall explain why the proposed order does not contain such a provision. The minimum time period for such committee or other party in interest to commence, or to file a motion to obtain authority to commence, any related proceedings as representative of the estate shall ordinarily be 60 days from the date of entry of the final order authorizing the use of cash collateral or the obtaining of credit, or such longer period as the Court orders for cause shown prior to the expiration of such period.

(g) *Content of Interim Orders.*

A motion that seeks entry of an emergency or interim order before a final hearing under Bankruptcy Rule 4001(b)(2) or (c)(2) shall describe the amount and purpose of funds sought to be used or borrowed on an emergency or interim basis and shall set forth facts to support a finding that immediate or irreparable harm will be caused to the estate if immediate relief is not granted before the final hearing.

(h) *Adequacy of Budget.*

If the debtor in possession or trustee will be subject to a budget under a proposed cash collateral or financing order or agreement, the motion filed under Bankruptcy Rule 4001(b), (c), or (d) shall include a statement by the trustee or debtor in possession as to whether it has reason to believe that the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget.

(i) *Notice.*

Notice of a preliminary or final hearing shall be given to the persons required by Bankruptcy Rules 4001(b)(3) and 4001(c)(3), as the case may be, the United States Trustee, and any other persons whose interests may be directly affected by the outcome of the motion or any provision of the proposed order.

(j) *Presence at Hearing.* Unless the court directs otherwise,

- (1) counsel for each proposed lender, or for an agent representing such lender, shall be present at all preliminary and final hearings on the authority to obtain credit from such lender, and counsel for each entity, or for an agent of such entity, with an interest in cash collateral to be used with the entity's consent shall be present at all preliminary and final hearings on the authority to use such cash collateral; and
- (2) a business representative of the trustee or debtor in possession, the proposed lender or an agent representing such lender, and any party objecting to the motion for authority to obtain credit, each with appropriate authority, must be present at, or reasonably available by telephone for, all preliminary and final hearings for the purpose of making necessary decisions with respect to the proposed financing.

(k) *Provisions of the Proposed Order.*

(1) *Findings of Fact.*

- (A) A proposed order approving the use of cash collateral under § 363(c) of the Bankruptcy Code, or granting authority to obtain

credit under § 364 of the Bankruptcy Code, shall limit the recitation of findings to essential facts, including the facts required under § 364 of the Bankruptcy Code regarding efforts to obtain financing on a less onerous basis and (where required) facts sufficient to support a finding of good faith under § 364(e) of the Bankruptcy Code, and shall not include any findings extraneous to the use of cash collateral or to the financing.

- (B) A proposed emergency or interim order shall include a finding that immediate and irreparable loss or damage will be caused to the estate if immediate financing is not obtained and should state with respect to notice only that the hearing was held pursuant to Bankruptcy Rule 4001(b)(2) or (c)(2), that notice was given to certain parties in the manner described, and that the notice was, in the debtor's belief, the best available under the circumstances.
  - (C) A proposed final order may include factual findings as to notice and the adequacy thereof.
  - (D) To the extent that a proposed order incorporates by reference to, or refers to a specific section of, a prepetition or postpetition loan agreement or other document, the proposed order shall also include a statement of such section's import.
- (2) *Mandatory Provisions.* The proposed order shall contain all applicable provisions included in the enumerated lists of material provisions set forth in Bankruptcy Rule 4001(b)(1)(B), (c)(1)(B), and (d)(1)(B), as supplemented by subsection (a) of this Local Rule.
  - (3) *Cross-Collateralization and Rollups.* A proposed order approving cross-collateralization or a rollup shall include language that reserves the right of the Court to unwind, after notice and hearing, the postpetition protection provided to the prepetition lender or the paydown of the prepetition debt, whichever is applicable, in the event that there is a timely and successful challenge to the validity, enforceability, extent, perfection, or priority of the prepetition lender's claims or liens, or a determination that the prepetition debt was undersecured as of the petition date, and the cross-collateralization or rollup unduly advantaged the lender.
  - (4) *Waivers, Consents or Amendments with Respect to the Loan Agreement.* A proposed order may permit the parties to enter into waivers or consents with respect to the loan agreement or amendments thereof without the need for further court approval provided that (i) the agreement as so modified is not materially different from that approved, (ii) notice of all amendments is filed with the Court, and (iii) notice of all amendments (other than those that are ministerial or technical and do not adversely affect the debtor) are provided in advance to counsel for any committee appointed under § 1102 or § 1114 of the Bankruptcy Code, all parties requesting notice, and the United States Trustee.
  - (5) *Conclusions of Law.* A proposed interim order may provide that the debtor

is authorized to enter into the loan or other agreement, but it shall not state that the Court has examined and approved the loan or other agreement.

- (6) *Order to Control.* The proposed order shall state that to the extent that a loan or other agreement differs from the order, the order shall control.
- (7) *Statutory Provisions Affected.* The proposed order shall specify those provisions of the Bankruptcy Code, Bankruptcy Rules and Local Rules relied upon as authority for granting relief, and shall identify those sections that are, to the extent permitted by law, being limited or abridged.
- (8) *Conclusions of Law Regarding Notice.* A proposed final order may contain conclusions of law with respect to the adequacy of notice under § 364 of the Bankruptcy Code and Bankruptcy Rule 4001.

### **Comment**

This rule was amended in its entirety in 2008 to conform to the 2007 amendments to Bankruptcy Rule 4001 and to replace the procedures for requests for the use of cash collateral or to obtain credit that were governed by former General Order M 274. Thus, this rule should be read in conjunction with Bankruptcy Rule 4001 as the requirements contained in this rule are meant to supplement, but not duplicate, Bankruptcy Rule 4001. This rule is not intended to fundamentally change practice under former General Order M-274, except as expressly provided.

As provided in former General Order M 274, a single motion may be filed seeking entry of an interim order and a final order, which orders would be normally entered at the conclusion of the preliminary hearing and the final hearing, respectively, as those terms are used in Bankruptcy Rules 4001(b)(2) and (c)(2). In addition, where circumstances warrant, the debtor may seek emergency relief for financing limited to the amount necessary to avoid immediate and irreparable harm to the estate pending the preliminary hearing, but in the usual case, only a preliminary and a final hearing will be required.

Notwithstanding the provisions of subsection (i), emergency and interim relief may be entered after the best notice available under the circumstances; however, emergency and interim relief will ordinarily not be considered unless the United States Trustee and the Court have had a reasonable opportunity to review the motion, the financing agreement, and the proposed interim order, and the Court normally will not approve provisions that directly affect the interests of landlords, taxing and environmental authorities and other third-parties without notice to them.

As suggested in former General Order M 274, prospective debtors may provide substantially complete drafts of the motion, interim order, and related financing documents to the United States Trustee in advance of a filing, on a confidential basis. Debtors are encouraged to provide drafts of financing requests, including proposed orders, to the United States Trustee as early as possible in advance of filing to provide that

office with the opportunity to comment.

The hearing on a final order for use of cash collateral under § 363(c) of the Bankruptcy Code, or for authority to obtain credit under § 364 of the Bankruptcy Code will ordinarily not commence until there has been a reasonable opportunity for the formation of a creditors committee under § 1102 of the Bankruptcy Code and either the creditors committee's appointment of counsel or reasonable opportunity to do so.

Reasonable allocations in a carve-out provision may be proposed among (i) expenses of professionals retained by committees appointed in the case, (ii) expenses of professionals retained by the debtor, (iii) fees payable to either the Bankruptcy Court or the United States Trustee, (iv) the reasonable expenses of committee members, and (v) reasonable post-conversion fees and expenses of a chapter 7 trustee, and the lender may refuse to include in a carve-out the costs of litigation or other assertions of claims against it.

As provided in former General Order M 274, non-essential facts regarding prepetition dealings and agreements may be included in an order approving the use of cash collateral or granting authority to obtain credit under a heading entitled "stipulations between the debtor and the lender" or "background."

As provided in former General Order M 274, an interim order will not ordinarily bind the Court with respect to the provisions of the final order provided that (i) the lender will be afforded all the benefits and protections of the interim order, including a lender's § 364(e) and § 363(m) protection with respect to funds advanced during the interim period, and (ii) the interim order will not bind the lender to advance funds pursuant to a final order that contains provisions contrary to or inconsistent with the interim order.

Subdivision (c)(1) of this rule was amended in 2009 to change the time period from five to seven days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The deadlines in subdivisions (c)(1) and (c)(2) of this rule were also amended in 2009 to delete the references to "business" days so that the time periods will be computed by calendar days, consistent with the 2009 amendments to Bankruptcy Rule 9006(a). The three day deadline in subdivision (c)(2) of this rule was amended in 2009 to change the time to five days to compensate for the change in the computation of time under the 2009 amendments to Bankruptcy Rule 9006(a).

**Rule 4001-3                    REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN  
CREDIT – Repealed [August 4, 2008]**

**Comment**

This rule was repealed in 2008 because of the amendments to Local Bankruptcy Rule 4001-2 made in 2008, which govern cash collateral and financing motions.

**Rule 4002-1                    DUTIES OF DEBTORS – PROCEDURES RELATING TO THE  
IMPLEMENTATION OF BANKRUPTCY CODE § 521**

The implementation of §521 of the Bankruptcy Code relating to the debtor's duties shall be governed by procedures contained in any applicable standing order issued by the Court.

**Comment**

The procedures relating to the implementation of §521(a)(1)(B) of the Bankruptcy Code, which requires an individual debtor to provide payment advices or other evidence of payment received within 60 days before the filing of the petition, and of §521(i), which provides for dismissal of the case if certain information is not filed within 45 days after the commencement of the case, are governed by General Order M-382 and any amendments or supplemental standing orders of the Court. Copies of General Order M-382, as well as any amendments or subsequent standing orders on the subject of the debtor's duties, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**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) fewer 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 property 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 an objection to the list of property 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.

**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 – Amended  
[December 1, 2009]**

The offices of the Clerk shall be open 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 not filed electronically 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. Any required fees for such filings shall be delivered to the Clerk's office no later than noon on the next day.

**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 or electronically at any time.

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.

The next business day deadline in this rule was amended in 2009 to delete the reference to "business" so that the time period will be consistent with the 2009 amendments to Bankruptcy Rule 9006(a).

**Rule 5005-1                    FILING PAPERS**

Except as provided in Local Bankruptcy Rule 1002-1, unless submitted by electronic means, all papers may be submitted for filing in the Clerk's office located in any of the three divisions of the Court identified in Rule 1073-1(a). However, all chambers copies required by Rule 9070-1(b) shall be submitted in the Clerk's office 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 by applicable standing orders issued by the Court, documents shall be filed, signed, or verified by means that are consistent with such standing orders.

**Comment**

This rule implements the authority contained in Bankruptcy Rule 5005(a). Procedures for filing by electronic means are governed by General Order M-242 and any amendments or supplemental standing orders of the Court. Copies of General Order M-242, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**Rule 5009-1                    FINAL REPORT AND ACCOUNT AND CLOSING REPORT IN A  
CHAPTER 7 CASE – Amended [December 1, 2009]**

(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 21 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.



(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.



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.

Subdivision (a) of this rule was amended in 2009 to change the time period from 20 to 21 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

#### **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 Bankruptcy Court. The movant is then required to file with the Clerk of the District Court a copy of the motion, the receipt for payment of the filing fee, three copies of the District Court Civil Cover Sheet, and a copy of any corporate ownership statement previously filed pursuant to Bankruptcy Rule 1007(a) or 7007.1. The movant shall then file with the Clerk of the Bankruptcy Court a statement indicating the Civil Case Number and District Court Judge assigned to the matter. All subsequent papers relating to the motion shall be filed with the Clerk of the District Court.

#### **Comment**

This rule was amended in 2004 to specify the procedural requirements imposed on the party moving for withdrawal of the reference under 28 U.S.C. § 157(d).

**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 assigned Judge's chambers.

**Comment**

This rule is derived from former Standing Order M-99.

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 –  
Amended [December 1, 2009]**

(a) *Notice.* The trustee may sell property of the estate that the trustee reasonably believes has an aggregate gross value of no more than \$10,000 by public or private sale on seven days' written notice to any party with an interest in such property, the landlord of the premises on which the property is located, and such other parties as the Court may direct. 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 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; and
- (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.*

- (1) If the trustee and a secured party, or other third party having an interest in the property, desire to conduct a joint auction sale, or if the joint sale of property in more than one bankruptcy estate is anticipated to be more cost effective or beneficial for all the bankruptcy estates, the Court shall enter an order prior to the sale fixing the method of allocating the commissions and expenses of sale.
- (2) The commissions and expenses incurred on behalf of one bankruptcy estate in a joint auction sale shall not be charged to any other estate unless the

motion requesting the joint auction reveals the identity and number of any other estate participants in the joint auction sale, and how such commissions and expenses shall be apportioned among them.

- (3) Nothing in this rule shall prevent the trustee from participating in a joint sale with a non-debtor, provided it is in the best interest of the debtor's estate and its creditors.

(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 14 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 21 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 14 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 last four digits of 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 Guidelines of the Court and of the 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 for the conduct of asset sales contained in any applicable standing order issued by the Court and with 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 (d) of this rule was amended in 2004 to provide for joint sales of property from more than one estate. Subdivision (e) makes clear that the proceeds of an auction shall be turned over within the time specified, 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 the time specified after the auction has been concluded and the supplementing of such report when the proceeds are received thereafter. Due to privacy concerns, subdivision (f) of this rule was amended in 2004 to delete the requirement that an auctioneer include in its report the social security numbers of people being paid labor charges.

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

In 2009, subdivision (a) of this rule was amended to change the time period from five to seven days, and subdivision (b) of this rule was amended to change the time period from 10 to 14 days. The purpose of these amendments was to conform the time periods in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The business day deadline in subdivision (b)(2) of this rule was also amended in 2009 to delete the reference to “business” so that the time period will be consistent with the 2009 amendments to Bankruptcy Rule 9006(a). Guidelines for the conduct of asset sales are governed by General Order M-383 and any amendments or supplemental standing orders of the Court. Copies of General Order M-383, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**Rule 6005-1                    AUCTIONEERS – Amended [December 1, 2009]**

- (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 seven 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).

Subdivision (f) of this rule was amended in 2009 to change the time period from five to seven days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

### **Rule 6006-1      EXECUTORY CONTRACTS AND UNEXPIRED LEASES – Amended [December 1, 2009]**

(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 less than 14 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 within 60 days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the trustee files a motion to assume or to extend the time to assume or reject an executory contract or unexpired lease of residential real property or personal property, and the motion is filed not later than 60 days after the order for relief (or, if the time to assume or reject the executory contract or unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than 14 days from the date of such filing, the time to assume or reject the executory contract or unexpired lease shall be extended automatically and without court order until the entry of the order resolving the motion.

(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 within 120 days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the debtor, debtor in possession, or the trustee files a motion to assume or to extend the time to assume or reject an unexpired lease of nonresidential real property, and the motion is filed not later than 120 days after the order for relief (or, if the time to assume or reject the unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than 14 days

from the date of such filing, the time to assume or reject the unexpired lease will be extended automatically and without court order until the entry of the order resolving the motion, except that the time for the debtor, debtor in possession, or trustee to assume or reject such unexpired lease shall not be extended beyond the date that is 210 days after the entry of the order for relief without the prior written consent of the landlord.

(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 within 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 within 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.

Under § 365(d)(1) of the Bankruptcy Code, in a chapter 7 case, the Court may, for cause, extend the 60-day time period for assuming or rejecting an executory contract or unexpired lease of residential real property or personal property. Similarly, under § 365(d)(4), the Court may, for cause, extend the 60-day time period for assuming or rejecting an unexpired lease of nonresidential real property. In 2004, subdivisions (b) and (c) of this rule were amended to avoid the necessity of obtaining a "bridge order" extending these time periods in the event that a timely motion to assume or a timely motion to extend the time was filed but not resolved by the Court before the expiration of the time to assume or reject the contract or lease. Adequate cause for an extension of time to assume or reject the executory contract or unexpired lease until the Court rules on the motion exists by virtue of the fact that a motion to assume or to extend the time was filed in a timely manner. Any party in interest objecting to the extension of time may request a hearing on an expedited basis. To prevent

abuse of the automatic extension, the return date of the motion must be no later than 14 days after the motion is filed.

Subdivision (a) of this rule was amended in 2009 to change the time period from 10 to 14 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

**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 7007.1-1**

**CORPORATE OWNERSHIP STATEMENT TO BE FILED BY A PARTNERSHIP OR JOINT VENTURE THAT IS A PARTY TO AN ADVERSARY PROCEEDING – Amended [December 1, 2009]**

The Corporate Ownership Statement required under Bankruptcy Rule 7007.1 shall also be filed by any party to an adversary proceeding, other than the debtor or a governmental entity, that is a general or limited partnership or joint venture.

**Comment**

Bankruptcy Rule 7007.1, effective December 1, 2003, requires a Corporate Ownership Statement to be filed for any corporation that is a party to an adversary proceeding other than the debtor or a governmental entity. "Corporation" is broadly defined under § 101(9) of the Bankruptcy Code (and includes, for instance, limited liability companies and other unincorporated companies or associations), but it does not cover general or limited partnerships. The reasons for which this rule was enacted – to give the Judges of this Court information by which they can determine whether or not they need to recuse themselves – apply equally to general and limited partnerships, and joint ventures. This local rule requires a similar disclosure with respect to business organizations of that character.

The heading of this rule was amended in 2009 to more accurately reflect the substance of the rule.

**Rule 7016-1 SUBMISSION OF MARKED PLEADINGS**

Unless the Court orders otherwise, marked pleadings are not required.

**Comment**

The Judges of the Court have determined that the benefits derived from the submission of marked pleadings normally do not justify the burdens on the plaintiff in submitting them, particularly in light of the information contained in pre-trial orders.

**Rule 7024-1 NOTICE OF CLAIM OF UNCONSTITUTIONALITY – Repealed [August 4, 2008]**

**Comment**

This rule was repealed in 2008 as unnecessary because of the adoption in 2008 of Bankruptcy Rule 9005.1, which makes Rule 5.1 of the Federal Rules of Civil Procedure applicable to cases under the Bankruptcy Code. Rule 5.1 accomplishes the same objective as former Local Bankruptcy Rule 7024-1.

**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 – Repealed [August 2, 2004]**

**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 – Repealed [August 2, 2004]**

**Rule 7031-1 OPT-OUT FROM CERTAIN PROVISIONS OF RULE 31 OF THE FEDERAL RULES OF CIVIL PROCEDURE – Repealed [August 2, 2004]**

**Rule 7033-1 INTERROGATORIES – Amended [December 1, 2009]**

(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, to the extent such information has not already been provided under Fed. R. Civ. P. 26(a)(1).

(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 14 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.

The initial disclosures required under Fed. R. Civ. P. 26(a)(1) must be made in adversary proceedings. Because information previously sought by interrogatories will frequently have been obtained by those initial disclosures, this rule has been amended accordingly.

Subdivision (f)(4) of this rule was amended in 2009 to change the time period from 10 to 14 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

#### **Rule 7033-2**

#### **OPT-OUT FROM CERTAIN PROVISIONS OF RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE – Repealed [August 2, 2004]**

#### **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 *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.
- subpoena  
docum

### 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 – Repealed [August 2, 2004]**

## **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 – Repealed [August 2, 2004]**

**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 the Court orders simultaneous submissions, any party may submit counter-findings and conclusions and shall serve them on all other parties within the time fixed by the Court. Unless adopted or otherwise ordered by the Court, proposed findings of fact and conclusions of law shall not form any part of the record on appeal.

**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 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 derived from Civil Rule 55.2 of the Local District Rules.

### **Rule 7056-1            SUMMARY JUDGMENT**

(a) Unless the Court orders otherwise, no party shall file a motion for summary judgment without first seeking a pre-motion conference. The request for a pre-motion conference shall be made by letter, filed on the CM/ECF system, setting forth the issues to be presented in the motion and the grounds for relief.

(b) Upon any motion for summary judgment pursuant to Bankruptcy Rule 7056, there shall be annexed to the motion a separate, short, and concise statement, in numbered paragraphs, 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.

(c) Papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and if necessary, additional paragraphs containing a separate, short, and concise statement of additional material facts as to which it is contended that there is a genuine issue to be tried.

(d) Each numbered paragraph in the statement of material facts required to be served by the moving party shall be deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(e) Each statement by the movant or opponent pursuant to subdivisions (b) or (c) of this rule, including each statement controverting any statement of material fact by a movant or opponent, shall be followed by citation to evidence which would be admissible.

## **Comment**

Subdivision (a) of this rule was added in 2004 because motions for summary judgment are frequently burdensome, in time and expense, for the Court and the parties. Parties frequently file motions for summary judgment when an objective examination would reveal triable issues of fact or when the Court might conclude that it would be more cost-effective to resolve all issues at trial, given that most trials in bankruptcy court are bench trials. Subdivision (a) provides the Court with opportunity to notify the parties of its observations at a pre-motion conference. The rule does not limit a party's right to file a motion for summary judgment after the pre-motion conference.

Subdivisions (b) through (e) of this rule are derived from Former Local Bankruptcy Rule 13(h) and are 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. These subdivisions were amended in 2004 to conform with the

**Rule 7087-1                      TRANSFER OF ADVERSARY PROCEEDINGS – Repealed [August 2, 2004]**

**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 cause to be filed on the CM/ECF system, unless previously filed, a copy of each item designated and attached to the designation.

(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 derived from Civil Rule 24(c) of the Former District Rules. This rule was amended in 2004 to take into account new procedures for electronic filing.

**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) “*CM/ECF*” means the Case Management/Electronic Case File System implemented in this Court, sometimes referred to herein as “ECF”;
- (7) “*Court*” means the United States Bankruptcy Court for the Southern District of New York;
- (8) “*District Clerk*” means the clerk or deputy clerk of the District Court;
- (9) “*District Court*” means the United States District Court for the Southern District of New York;
- (10) “*District Judge*” means a United States District Judge appointed to, or sitting by designation in, the District Court;
- (11) “*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;
- (12) “*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;
- (13) “*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);
- (14) “*Local District Rules*” means the Local Rules for the United States District Court for the Southern and Eastern Districts of New York, as amended from time to time; and
- (15) “*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 – Amended [August 4, 2008]**

- (a) *Papers Submitted for Filing.* Papers submitted for filing shall
- (1) be plainly typed or printed;
  - (2) not be bound or stapled;
  - (3) have no erasures or interlineations which materially deface them; and
  - (4) state on the face of the document:
    - (A) the name of the attorney for the filing party;
    - (B) the attorney's office and post office addresses; and
    - (C) the attorney's telephone number.

(b) Chambers copies and copies for the United States Trustee shall be bound or stapled and submitted in accordance with Local Bankruptcy Rule 9070-1.

### **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.

This rule was amended in 2004 to conform to Civil Rule 11.1(b) of the Local District Rules to allow attorneys to use an identification number issued by the District Court instead of the last four digits of the attorney's social security number.

This rule was also amended in 2004 to clarify that pleadings no longer require litigation backs or covers.

This rule was amended in 2008 to conform to the repeal of Civil Rule 11.1(b) of the Local District Rules, which previously required that every pleading, written motion and other paper signed by an attorney include the attorney's initials and the last four digits of the attorney's social security number or any other four digit number registered by the attorney

with the clerk of the court.

**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 – Amended [December 1, 2009]**

(a) *Discovery-Related Motions.* Unless the Court orders otherwise, all motion papers under Bankruptcy Rules 7026 through 7037 shall be served at least seven 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.

(b) *All Other Motions.* Unless the Court orders otherwise, all other motion papers shall be served at least 14 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 seven 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 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.

In 2009, subdivision (a) of this rule was amended to change the time period from five to seven days, and subdivision (b) of this rule was amended to change the time period from 10 to 14 days. The purpose of these amendments was to conform the time periods in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy

Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The one-day deadline in subdivision (a) was changed to three days, and the three-day deadline in subdivision (b) was changed to seven days, to give the Court and the parties more time to consider the answering papers before the hearing.

The one business day deadline in subdivision (c) of this rule was also amended in 2009 to delete the reference to "business" so that the time period will be consistent with the 2009 amendments to Bankruptcy Rule 9006(a).

### **Rule 9011-1                    SIGNING OF PAPERS – Amended [August 4, 2008]**

(a) All pleadings, motions, and other papers that are submitted for filing, except a list, schedule, or statement, or amendments thereto, shall be signed by an attorney of record in the attorney's own name or, if there is no attorney, all papers submitted for filing shall be signed 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.

(b) The signing of documents filed electronically shall be governed by the applicable standing order on electronically filed cases issued by the Court. 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. This rule was amended in 2004 to conform to Civil Rule 11.1(b) of the Local District Rules to allow attorneys to use an identification number issued by the District Court instead of the last four digits of the attorney's social security number.

This rule was amended in 2008 to conform to the repeal of Civil Rule 11.1(b) of the Local District Rules, which previously required that every pleading, written motion and other paper signed by an attorney include the attorney's initials and the last four digits of the attorney's social security number or any other four digit number registered by the attorney with the clerk of the court.

Subdivision (a) was also amended in 2008 to conform to Rule 9011(a), which does not require an attorney's signature on lists, schedules, and statements.

Subdivision (b) was also amended in 2008 to provide that signing electronically filed documents is governed by the Court's standing order on electronically filed cases, which is General Order M-242, and any amendments or supplemental standing orders of the Court. Such standing orders may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**Rule 9013-1                    MOTION PRACTICE – Amended [August 4, 2008]**

(a) *Rule or Statutory Basis.* Each motion shall specify the rules and statutory provisions upon which it is predicated and the legal authorities that support the requested relief, either in the motion or in a separate memorandum of law. If such specification has not been made, the Court may strike the motion from the calendar.

(b) *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.

This rule was amended in 2008 to delete the requirement that a separate memorandum of law be filed with every motion. A discussion of the law must be included in the motion or responsive pleading if a separate memorandum of law is not filed.

**Rule 9014-1                    CONTESTED MATTERS**

Unless the Court orders otherwise, Rules 7(b) and 24 of the Federal Rules of Civil Procedure, as incorporated in Bankruptcy Rules 7007 and 7024, respectively, and Local Bankruptcy Rules 7005-1, 7007-1, 7016-1, 7024-1, 7026-1, 7027-1, 7030-1, 7033-1, 7034-1, 7036-1, 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 9014-2                    FIRST SCHEDULED HEARING**

The first scheduled hearing in a contested matter will not be an evidentiary hearing at

which witnesses may testify, unless:

- (a) the Court gives prior notice to the parties that such hearing will be an evidentiary hearing;
- (b) the motion requests emergency relief and is made at the commencement of the case;
- (c) the motion requests interim or final relief under § 363(c)(2)(B) or § 364 of the Bankruptcy Code;
- (d) the motion requests the Court's approval of rejection of an unexpired lease of real property under § 365(a) of the Bankruptcy Code, and a timely objection thereto is filed;
- (e) the hearing is on confirmation of a plan in a case under chapter 9, chapter 11, chapter 12, or chapter 13 of the Bankruptcy Code; or
- (f) the Court, by general order, has directed that the first scheduled hearing with respect to the type of relief requested in the motion shall be an evidentiary hearing at which witnesses may testify.

#### **Comment**

Bankruptcy Rule 9014(e), added in 2002, requires that the Court provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify. Local Rule 9014-2 was added in 2004 to provide such a procedure. Nothing in Local Rule 9014-2 precludes a party from requesting an evidentiary hearing at the first scheduled hearing and asking the Court to provide for notice thereof under paragraph (a).

#### **Rule 9015-1                    JURY TRIALS – Amended [December 1, 2009]**

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 14 days after the service of the last pleading directed to the issue for which the demand was made.

#### **Comment**

§ 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 if the District Court has specifically designated the Bankruptcy Court to exercise such jurisdiction. The District Court, by order dated December 7, 1994, has specifically designated the Bankruptcy Court to conduct jury trials pursuant to § 157(e). 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 14-day period for filing the statement of consent, which runs from the service of the last pleading, as specified in Bankruptcy Rule 7007.

This rule was amended in 2009 to change the time period from 10 to 14 days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

**Rule 9019-1                    ALTERNATIVE DISPUTE RESOLUTION**

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

**Comment**

Procedures governing mediation programs in bankruptcy cases and adversary proceedings are governed by General Order M-390 and any amendments or supplemental standing orders of the Court. Copies of General Order M-390, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**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 – Amended [December 1, 2009]**

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 provides that a judgment or order is effective when entered under Bankruptcy Rule 5003.

**Rule 9023-1            MOTIONS FOR REARGUMENT – Amended [December 1, 2009]**

(a) A motion for reargument of a court order determining a motion shall be served within 14 days after the entry of the Court's order determining the original motion, or in the case of a court order resulting in a judgment, within 14 days after the entry of the judgment, 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.

Subdivision (a) of this rule was amended in 2004 to conform with the 2004 amendments to Local District Rule 6.3.

Subdivision (a) of this rule was amended in 2009 to change the time periods from 10 to 14 days. The purpose of the amendment was to conform the time periods in this rule to the 2009 time-related amendments

to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

**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 – Amended [December 1, 2009]**

(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 in an unsealed envelope to the Clerk's office located in the division in which the assigned Judge sits on the same day as the papers are filed with the Clerk or, if filed electronically, not later than the next day.

### **Comment**

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

The next business day deadline in subdivision (b) of this rule was amended in 2009 to delete the reference to "business" so that the time period will be consistent with the 2009 amendments to Bankruptcy Rule 9006(a).

## **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**                    **SUBMISSION, SETTLEMENT OR PRESENTMENT OF ORDER, JUDGMENT, OR DECREE – Amended [December 1, 2009]**

(a)     *Submission or Settlement of Order, Judgment, or Decree.* Unless the Court orders otherwise, if, following a hearing or decision, the Court directs a party to submit or settle an order, judgment, or decree, the party, within 14 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 submit or settle an order, judgment, or decree within the 14 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 submitted or 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.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK at

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

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

NOTICE OF PRESENTMENT OF [INSERT TITLE OF ORDER]

PLEASE TAKE NOTICE that upon the annexed [application or motion] of [insert name of applicant or movant], the undersigned will present the attached proposed order to the Honorable [insert name], United States Bankruptcy Judge, for signature on [insert date] at 12:00 noon.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed order must be made in writing and received in the Bankruptcy Judge's chambers and by the undersigned not later than 11:30 a.m. [on that date.] Unless objections are received by that time, the order may be signed.

Dated: [place]  
[date]

[insert

signature block]

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

(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) Application to confirm a sale pursuant to Local Bankruptcy Rule 6004-1;
- (B) Motion to extend the time to assume or reject a lease pursuant to § 365(d)(4) of the Bankruptcy Code;
- (C) Motion for entry of a default judgment in an adversary proceeding pursuant to Bankruptcy Rule 7055 and Local Bankruptcy Rule 7055-2;
- (D) Motion to extend the time to object to discharge or dischargeability pursuant to Bankruptcy Rule 4004 or 4007;
- (E) Application to avoid a judicial lien that impairs an exemption pursuant to § 522(f) of the Bankruptcy Code;
- (F) Application for an examination pursuant to Bankruptcy Rule 2004 to the extent that the application is not granted *ex parte*;
- (G) 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 at

Presentment Date and Time:  
[Insert date]  
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.

Subdivision (c)(1) of this rule was amended in 2008 to delete from the list of motions that may be made on presentment a motion to terminate the automatic stay pursuant to § 362 of the Bankruptcy Code in a chapter 13 case. The purpose of this amendment is to assure that the Court will properly hear, and consider the accuracy of, allegations of default in cases concerning an individual debtor. 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).

Subdivision (a) of this rule was amended in 2009 to change the time periods from 15 to 14 days. The purpose of the amendment was to conform the time periods in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

Subdivision (a) and the heading of this rule were amended in 2009 so that the rule also will apply when the Court directs a party to submit an order, judgment, or decree.

### **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.

(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.