

**Proposed Amendments to the Local Bankruptcy Rules of the
United States Bankruptcy Court for the Southern District of New York**

**Rule 1007-1. DUTY TO FILE A LIST OF CREDITORS AND EQUITY SECURITY HOLDERS
OTHER ENTITIES WITH THE PETITION UNDER BANKRUPTCY RULE 1007(a)(1)**

~~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.~~

(a) Duties Generally. The list of creditors and other entities required to be filed under Bankruptcy Rule 1007(a)(1), and the creditors' matrix, shall include the full name and complete mailing address, including street number or post office box, if any, and zip code. If a debt is owed to an agency or department of the United States, the list and matrix shall include the name and address of the particular agency or department to which such debt is owed.

(b) Attorneys Filing Electronically.

(1) Debtor's counsel, at the time of filing the petition, shall (i) file the list of creditors and other entities required under Bankruptcy Rule 1007(a)(1), and (ii) unless a claims and noticing agent has been retained by the debtor in accordance with Local Bankruptcy Rule 5075-1, upload the creditors' matrix into the CM/ECF creditors' database. Reference should be made to *Procedures for Filing Creditors' List*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/procedures-filing-creditors-list>).

(2) When amending a schedule to add a creditor or other entity required to be on the list filed under Bankruptcy Rule 1007(a)(1), debtor's counsel shall file the amended schedule on the docket and pay the applicable fee and, unless a claims and noticing agent has been retained by the debtor in accordance with Local Bankruptcy Rule 5075-1, upload the newly-added entity into the CM/ECF creditor database. Additionally, debtor's counsel shall serve any newly-added entity with notice of the case and file timely proof of service in accordance with Local Bankruptcy Rule 9078-1.

(3) When amending a schedule to modify an address, the filing of the amended schedule shall be accompanied by a letter indicating which entity is the subject of the modification and how the address has been modified.

(c) Debtors Not Represented by an Attorney.

- (1) A debtor not represented by an attorney shall, at the time of filing the petition, file a paper document setting forth, for each creditor or other entity required to be on the list filed under Bankruptcy Rule 1007(a), the full name and complete mailing address, including street number or post office box, if any, and zip code. In addition to such paper document, the debtor shall provide the list required to be filed under Bankruptcy Rule 1007(a)(1) in an electronic format (such as a USB flash drive, CD, or diskette). Reference should be made to *Procedures for Filing Creditors' List*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/procedures-filing-creditors-list>).
- (2) When amending a schedule to add a creditor or modify a creditor's address, the filing of the amended schedule shall be accompanied by a letter indicating which creditor is being added or, if modification of a creditor's address is sought, which creditor is the subject of the modification and how the address has been modified. Additionally, the debtor shall serve any newly-added creditor or other entity with notice of the case and file timely proof of service in accordance with Local Rule 9078-1.

Comment

This rule is amended to include the requirements established by General Order M-408, relating to the debtor's duty to file the list of creditors. The Clerk's Office maintains a register of mailing addresses of federal and state governmental units and certain taxing authorities pursuant to Bankruptcy Rule 5003(e). This rule also makes mandatory certain provisions of General Order M-408 that the debtor or the debtor's attorney "should" follow. Other clarifying amendments are also made to this rule. General Order M-408 will be abrogated and replaced by this local rule.

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~~ effectuate the transfer of the case to the transferee court.

Comment

This rule is amended to eliminate the need for the Clerk to transmit certified copies or originals of documents in the age of electronic transmission. The District Court similarly amended its Local Civil Rule 83.1 in recognition of the electronic filing of documents.

Rule 2002-3. SERVICE OF A CHAPTER 13 PLAN

In a chapter 13 case, the debtor shall serve the plan, and any amended plan that changes the treatment of any party, on the United States Trustee, the chapter 13 trustee, and all creditors more than 28 days, plus three additional days if service is by mail, before the confirmation hearing. The debtor shall file timely proof of service in accordance with Local Bankruptcy Rule 9078-1.

Comment

This rule is promulgated to include in the Local Bankruptcy Rules the requirements established by General Order M-406, relating to service of a chapter 13 plans. General Order M-406 will be abrogated and replaced by this local rule.

Rule 2002-4. NOTICE OF PETITION FOR RECOGNITION IN CHAPTER 15 CASE

A foreign representative commencing a chapter 15 case shall forthwith give the notice required by Bankruptcy Rule 2002(q)(1) and shall file proof of service in accordance with Local Rule 9078-1. In addition to the information required under Bankruptcy Rule 2002(q), the notice shall include a statement that, at the hearing, the Court may order the scheduling of a case management conference to consider the efficient administration of the case.

Comment

This rule is added to include in the Local Bankruptcy Rules the notice requirements relating to chapter 15 cases promulgated by General Order M-323, with stylistic changes to conform to Bankruptcy Rule 2002(q)(1). The second sentence is added so that parties have notice that the Court may, at the hearing on the petition for recognition of a foreign proceeding, schedule a case management conference to consider the efficient administration of the case. General Order M-323 will be abrogated and replaced by this local rule.

Rule 2004-1. UNIFORM DEFINITIONS FOR EXAMINATIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS UNDER RULE 2004

Civil Rule 26.3 of the Local District Rules shall apply to requests for examinations and the production of documents under Bankruptcy Rule 2004.

Comment

This rule has been added to clarify that the uniform definitions set forth in Civil Rule 26.3 of the Local District Rules (*link to District Court rule*) are applicable to examinations and the production of documents under Rule 2004. Pursuant to Local Bankruptcy Rule 7026-1, the uniform definitions have been applicable to discovery requests in cases and proceedings.

Rule 2016-1. COMPENSATION OF PROFESSIONALS

- (a)** A person requesting an award of compensation or reimbursement of expenses for a professional shall comply with the ~~requirements contained in any guidelines for fees and disbursements promulgated by the Court~~ *Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases* promulgated by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/guidelines-fee-applications>).
- (b)** A person requesting an award of compensation or reimbursement of expenses for a professional shall use in connection with the application a form order that conforms to the *Order Granting Application(s) for Allowance of Interim/Final Compensation and Reimbursement of Expenses* promulgated by the Court, including any applicable schedules, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/order-granting-compensation-and-expenses>).
- (c)** A person requesting an order establishing procedures for monthly compensation and reimbursement of expenses for professionals shall comply with the *Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals* promulgated by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/procedures-monthly-compensation>).

Comment

This rule is amended to better refer to the guidelines, procedures, and form orders promulgated by General Orders M-389, M-412, M-427, and M-447, and to state in the rule the links to the Court's website where practitioners may access them. The guidelines, procedures, and forms may be amended by the Court after giving notice and opportunity for comment as is appropriate. General Orders M-389, M-412, M-427, and M-447 will be abrogated and replaced by this local rule.

Rule 2090-2. APPEARANCE BY DEBTOR'S COUNSEL IN ADVERSARY PROCEEDINGS, CONTESTED MATTERS, AND OTHER PROCEEDINGS

The attorney of record for a debtor, or an attorney acting of counsel to such attorney and who is knowledgeable in all aspects of the case, shall appear on behalf of the debtor in every aspect of the case.

including but not limited to defending an adversary proceeding, contested matter, motion, or application filed against the debtor during the pendency of the bankruptcy case.

Comment

This rule is added to require that the debtor's attorney of record, or an attorney acting as counsel to such attorney who has knowledge of all aspects of the case, appear at all proceedings in the case.

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 the *Procedural Guidelines for Filing Requests for Orders to Set the Last Date for Filing Proofs of Claim*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/guidelines-setting-last-date-filing-proofs-claim>), ~~procedural guidelines for requests for bar orders contained in any applicable standing order issued by the Court.~~

Comment

This rule is amended to better refer to the procedures promulgated by General Order M-386 and to state in the rule the link to the Court website where practitioners may access the governing procedures. The version of the guidelines in effect at the time of this rule amendment is headed the "Second Amended" version. These guidelines may be further amended by the Court in the future after giving notice and opportunity for comment as is appropriate. General Order M-386 will be abrogated and replaced by this local rule.

Rule 3015-1. CHAPTER 13 PLANS: MODEL PLAN AND CONFIRMATION ORDER; TREATMENT OF DEBTOR'S ATTORNEY'S FEES AS ADMINISTRATIVE EXPENSES; SERVICE

(a) *Model Plan and Confirmation Order.* In a chapter 13 case, the plan shall conform to the model Chapter 13 Plan adopted by the Court, which shall be available at the Clerk's office and on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/ModelChapter13Plan.doc>), and the confirmation order shall conform to the model Confirmation Order adopted by the Court, which shall be available in the Clerk's office and on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/ModelChapter13ConfirmationOrder.doc>) ~~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~~ The debtor shall serve the plan or a summary of the plan on the chapter 13 trustee and all creditors and shall file proof of service in accordance with Local Bankruptcy Rule 9078-1.
- (d) *Best Interest of Creditors' Analysis.* The Chapter 13 Standing Trustee shall prepare and file a statement detailing whether the proposed plan meets the requirements of section 1325(a)(4) of the Bankruptcy Code and, if applicable, a "Plan Analysis Statement" detailing whether the plan complies with section 1325(b) of the Bankruptcy Code. Such statements shall be filed no later than 21 days after the expiration of the time for filing proofs of claim. The Court may confirm a plan prior to the filing of the Plan Analysis Statement if it appears to the Court that the plan satisfies the requirements for confirmation.

Comment

Subdivision (a) of this rule is amended to state in the rule the link to the Court's website where practitioners may access the referenced forms. Subdivision (d) is added to include in the rule the requirements set forth in General Order M-384. The time period of 20 days in the general order is changed to 21 days. General Order M-384 will be abrogated and replaced by this local rule.

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 the *Prepackaged Chapter 11 Guidelines*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/prepackaged-chapter-11-guidelines>). ~~procedural guidelines for prepackaged chapter 11 cases contained in any applicable standing order issued by the Court.~~

Comment

This rule is amended to specify the title of the procedures promulgated by General Order M-387 and to state in the rule the link to the Court website where practitioners may access the governing procedures. The procedures set forth in the *Prepackaged Chapter 11 Amended Guidelines* may be further amended by the Court after giving notice and opportunity for comment as is appropriate. General Order M-387 will be abrogated and replaced by this local rule.

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

- ~~(a)~~ *Objections to Confirmation.* Unless the Court orders otherwise, objections to confirmation of a plan in a chapter 9 or chapter 11 case shall be filed not later than seven days prior to the first date set for the hearing to consider confirmation of the plan.
- ~~(b)~~ *Repealed.* ~~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

Subdivision (b) is abrogated so as to leave to the Court's discretion on a case-by-case basis whether to require disclosure, and the manner and extent of such disclosure, of the terms of any agreement between the plan proponent and the objecting party relating to the withdrawal of, or the failure to prosecute, an objection to confirmation of a plan.

Rule 3021-1. POSTCONFIRMATION REQUIREMENTS IN CHAPTER 11 CASES

- ~~(a)~~ *Notice of Postconfirmation Filing Requirements.* ~~Upon confirmation of a chapter 11 plan, the plan proponent shall obtain from the Clerk a notice of postconfirmation filing requirements.~~
- ~~(b)~~ *[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:~~
- (a) Unless the Court orders otherwise, within 14 days after the entry of an order confirming a chapter 11 plan, the plan proponent or other responsible person under the plan shall submit to the Court a proposed order that shall contain a timetable with the steps proposed for achieving substantial consummation of the plan and entry of a final decree, including resolution of claims and resolution of avoidance and other bankruptcy court litigation outstanding or contemplated. The law firms or

individuals responsible for safeguarding and accounting for the proceeds of all recoveries on behalf of the estate shall be identified.

- (b) The plan proponent or responsible person under the plan shall file a revised order wherever necessary but no less than every six months identifying the actions taken under the prior order and any necessary revisions to the timetable.

Comment

This rule is amended regarding postconfirmation requirements in chapter 9 and chapter 11 cases. The “Postconfirmation Order and Notice” form is abrogated.

Rule 3022-1. CLOSING REPORTS IN CHAPTER 11 CASES

Unless the Court orders otherwise, within 14 days ~~following substantial consummation of a chapter 11 plan,~~ after the estate is fully administered and the Court has discharged any trustee serving in the case, the debtor or trustee shall file and serve upon the United States Trustee a closing report substantially in the ~~following form:~~ form available on the Court’s website (<http://www.nysb.uscourts.gov/chapter-11-forms>).

Comment

This rule is amended to conform to section 350(a) of the Bankruptcy Code. The rule currently requires a closing report within 14 days following “substantial consummation,” which requires that distributions under the plan be commenced rather than completed. Despite substantial consummation, there may remain unresolved claim allowance litigation, preference and fraudulent conveyance adversary proceedings, and other proceedings that should be resolved before the case is closed. The amended language of this rule tracks section 350(a) on the closing of cases. This amended rule should give greater assistance to the Court, which is required by Bankruptcy Rule 3022 of the Federal Rules of Bankruptcy Procedure to enter a final decree closing the case after the estate is fully administered.

Rule 4001-1.1. PAYMENT AND CURE OF PREPETITION JUDGMENT OF POSSESSION INVOLVING RESIDENTIAL PROPERTY

(a) A debtor is deemed to have complied with § 362(l)(1) of the Bankruptcy Code by:

- (1) Making the required certification by completing the four check boxes, including the landlord’s name and address, listed on the Voluntary Petition (page two) under the section entitled, “Certification by a Debtor Who Resides as a Tenant of Residential Property”; and

(2) Delivering to the Clerk, together with the Voluntary Petition (or within one day of the filing, if the Voluntary Petition is filed electronically):

- (A) a certified or cashier's check or money order, made payable to the lessor, in the amount of any rent that would become due during the thirty-day period after the filing of the petition; and
- (B) a copy of the judgment of possession.

(b) If the debtor complies with the requirements set forth in subdivision (a), the Clerk shall, within one day, send notice of compliance to the lessor who shall then have the option, exercisable no later than 14 days after the date of the notice, to consent to receive the check (in which event the lessor shall provide payment instructions), or file an objection to the debtor's certification, which objection shall constitute a request for hearing. A lessor is deemed to have consented to receive the check if the lessor does not respond within the 14-day deadline, in which event the Clerk shall send the check to the lessor at the address set forth in the debtor's certification.

Comment

This rule is amended to include in the Local Rules the requirements established by General Order M-385, which relate to the requirements set forth in § 362(l)(1) of the Bankruptcy Code. General Order M-385 will be abrogated and replaced by this local rule.

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.~~

(a) *Payment Advices Required by § 521(a)(1)(B)(iv).* In a chapter 7, chapter 12, or chapter 13 case in which the debtor is an individual, no later than 30 days before the date on which the meeting of creditors is conducted under section 341(a) of the Bankruptcy Code, the debtor shall provide to the trustee copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition by the debtor from any employer of the debtor. Copies of such payment advices or other evidence of payment shall not be filed with the Court.

(b) Request by Party in Interest for an Order of Dismissal under § 521(i)(2). If a party in interest requests an order of dismissal under section 521(i)(2) of the Bankruptcy Code, the following procedures shall apply:

- (1) The party in interest shall serve a copy of the request on the debtor's attorney and the debtor at the same time that the party in interest sends the request to the Court.
- (2) If the debtor objects to the request within seven days of service, the debtor's objection will be treated as a request for a hearing, which the Court shall schedule promptly.
- (3) No order of dismissal will be entered until the debtor's objection has been resolved, except that nothing herein shall affect the right of any party in interest to seek dismissal, or the authority of the Court to dismiss the case, pursuant to any other provision of applicable bankruptcy law.

Comment

This rule is amended to include the provisions contained in General Order M-382, relating to § 521(a)(1)(B)(iv) and § 521(i)(2) of the Bankruptcy Code. Subdivision (a) of this rule expands the scope of General Order M-382 by making it applicable in chapter 12 cases, as well as in chapter 7 and chapter 13 cases. General Order M-382 will be abrogated and replaced by this local rule.

Rule 4004-1. AUTOMATIC EXTENSION OF TIME TO FILE COMPLAINT OBJECTING TO DISCHARGE IN EVENT OF AMENDMENT – Repealed [Effective Date]

~~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.~~

Comment

This rule is abrogated. The procedures for extending the time to object to the debtor's discharge are governed by Bankruptcy Rule 4004(b). The rights of a creditor that had not been scheduled in time to file a timely objection to discharge, or a timely motion to extend the time to file an objection to discharge, are matters governed by substantive law.

Rule 4004-2. DEBTOR'S CERTIFICATION CONCERNING DOMESTIC SUPPORT OBLIGATIONS IN A CASE UNDER CHAPTER 12 OR CHAPTER 13

- (a) In a chapter 12 or chapter 13 case, within 30 days before the date on which the last payment is due under the plan, or when the debtor files a motion to request a hardship discharge under section 1228(b) or section 1328(b) of the Bankruptcy Code, whichever is earlier, the Standing Trustee shall furnish the debtor with a *Debtor's Certification Regarding Domestic Support Obligations*, Director's Procedural Form B283, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/official-bankruptcy-forms>).
- (b) The debtor shall complete, sign, and return to the Standing Trustee the *Debtor's Certification Regarding Domestic Support Obligations* when submitting the check for the last payment under the chapter 12 or chapter 13 plan or, if the debtor has filed a motion to request a hardship discharge, no later than the date of the hearing on the debtor's motion. In a joint case, each debtor must complete and sign a separate *Debtor's Certification Regarding Domestic Support Obligations*.
- (c) The Standing Trustee shall attach the completed *Debtor's Certification Regarding Domestic Support Obligations* when electronically filing the *Notice of Request for a Discharge* or, in a case in which the debtor seeks a hardship discharge, shall otherwise make it available on the docket of that case.

Comment

This rule is promulgated to include in the Local Rules the provisions established by General Order M-338, relating to the debtor's certifications regarding domestic support obligations. Though the General Order M-338 provides that the Standing Trustee "should" furnish the debtor with the certification form, and "should" attach the completed form to the *Notice of Request for a Discharge*, this rule makes these provisions mandatory. General Order M-338 will be abrogated and replaced by this local rule.

Rule 4007-1. AUTOMATIC EXTENSION OF TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT IN EVENT OF AMENDMENT - Repealed [Effective Date]

~~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.~~

Comment

This rule is abrogated. The procedures for extending the time to file a complaint objecting to the dischargeability of a debt are governed by Bankruptcy Rule 4007 of the Federal Rules of Bankruptcy Procedure. The rights of a creditor that had not been scheduled in time to file a timely complaint to

determine the dischargeability of a debt are governed by substantive law, including section 523(a)(3) of the Bankruptcy Code.

Rule 4008-1. REAFFIRMATION AGREEMENTS

A person filing a reaffirmation agreement shall adhere to the *Guidelines for Filing a Reaffirmation Agreement in the Southern District of New York*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/guidelines-reaffirmation-agreements>).

Comment

This rule is promulgated to include in the Local Rules the requirements established by General Order M-404, relating to reaffirmation agreements. The procedures set forth in the *Guidelines for Filing a Reaffirmation Agreement in the Southern District of New York* may be amended by the Court after giving notice and opportunity for comment as is appropriate. General Order M-404 will be abrogated and replaced by this local rule.

Rule 5001-1 CLERK'S OFFICE: HOURS

Unless otherwise posted on the Court's website,~~The~~ 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 business day.

Comment

This rule is amended to clarify that the times and days when the Clerk's office is opened may be altered as posted on the Court's website.

Rule 5005-2. FILING BY ELECTRONIC MEANS

~~In cases where 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. Unless the Court directs otherwise, all attorneys practicing in the Court, including attorneys admitted *pro hac vice*, are required to file all pleadings, motions, or other documents (except documents to be placed under seal) by~~

electronic means, and all such documents required to be signed or verified shall be signed or verified by electronic means, in each case consistent with the *Electronic Filing Procedures* issued by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/ecf-procedures>). If electronic filing, signing, or verification is not feasible in a particular situation, the Court may provide reasonable accommodation or excuse the requirement that documents be filed, signed, or verified by electronic means under the particular circumstances.

Comment

This rule is amended to clarify that all attorneys practicing in the Court are required to file, sign, and verify pleadings, motions, and other documents by electronic means, unless the Court directs otherwise in a particular case or the document is filed under seal. If electronic filing is not feasible in a particular situation, the Clerk may provide a reasonable accommodation or excuse the requirements of this rule under the particular circumstances.

This rule is also amended to specify the title of the procedures promulgated by General Order M-399 and to state in the rule the link to the Court's website where practitioners may access the governing procedures governing filing, signing, and verifying papers by electronic means. It is anticipated that these guidelines will be amended from time to time to account for changes in technology or the law. General Order M-399 will be abrogated and replaced by this local rule.

Rule 5005-3 PAYMENT OF COURT FEES

- (a) Unless another form of payment is required by the Court, filers shall pay by credit card, through the CM/ECF system, all applicable filing fees at the time of filing or by the end of the day on which the filing occurred.
- (b) If fees are not paid within four days of the date incurred, the filer shall be locked out of the CM/ECF system until full payment is made.

Comment

This rule is added to state the means and timing regarding payment of the filing fees, as well as the consequences of a failure to pay such fees.

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

- (c) Closing Report in a No Asset Case. ~~Unless the Court orders otherwise, in~~ In a chapter 7 no asset case, the trustee shall file ~~and serve upon~~ a No Distribution Report as a virtual docket text entry in

accordance with the guidelines promulgated by the Office of the United States Trustee a closing report substantially in the following form.

Comment

Subsection (c) was amended to clarify that a separate form need not be attached to the “No Distribution” docket entry in a no asset chapter 7 case.

Rule 5009-2. CLOSING A CHAPTER 15 CASE

- (a) *Closing the Case.* In a case under chapter 15 of the Bankruptcy Code, the Court shall close the case when there is a presumption under Bankruptcy Rule 5009(c) that the case has been fully administered or the Court, after notice and a hearing, determines that the purpose of the foreign representative’s appearance in the chapter 15 case has been completed, whichever is earlier.
- (b) *Reopening the Case.* A case under chapter 15 may be reopened to provide appropriate relief to the foreign representative or for other cause.

Comment

This rule has been added to provide for the closing of a chapter 15 case, as well as reopening a case for cause.

The Bankruptcy Code and Bankruptcy Rules do not provide for the closing and reopening of a chapter 15 case, but impose certain reporting requirements on the foreign representative so that the Court is aware of the status of the case. In particular, section 1518 of the Bankruptcy Code imposes on the foreign representative the duty to promptly file a notice informing the Court of any substantial change in the status of the foreign proceeding or of the foreign representative’s appointment, and of any other foreign proceeding regarding the debtor. Bankruptcy Rule 2015(d) requires the filing of such reports within 14 days after the foreign representative becomes aware of such information. Under Bankruptcy Rule 5009(c), the foreign representative is also required to file and transmit to the United States Trustee a final report describing the nature and results of the foreign representative’s activities in the Court when the purpose of the foreign representative’s appearance in the Court is completed, and to give notice of the report to certain parties. The foreign representative must file a certificate with the Court certifying that such notice has been given. Under Bankruptcy Rule 5009(c), if no objection has been filed within 30 days after the certificate is filed, there is a presumption that the case has been fully administered. At that time, the case should be closed. However, even in the absence of a certificate, the Court has the discretion, after notice and a hearing, to close the case if it finds that the purpose of the foreign representative’s appearance in the case has been completed.

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 has been amended to clarify that the Bankruptcy Court Clerk now opens the motion to withdraw the reference on the District Court's electronic filing system. The District Court will then notify the parties of the case number and judge assigned to the case.

Rule 5075-1. CLERK'S USE OF OUTSIDE SERVICES AND AGENTS; CLAIMS AND NOTICING 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) In a case in which the number of creditors and equity security holders, in the aggregate, is 250 or more, the estate shall retain, subject to approval of the Court, a claims and noticing agent in accordance with the *Protocol for the Employment of Claims And Noticing Agents under 28 U.S.C. § 156(c)*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/claims-agent-forms>). With court approval, the estate may retain a claims and noticing agent in accordance with such protocol in a case in which the number of creditors and equity security holders, in the aggregate, is less than 250. The costs of services provided by such agent shall be paid by the estate. When the case is closed, the claims and noticing agent shall deliver to the Clerk a copy of the claims register.
- (c) Upon the request of the Clerk, the agent shall provide a copy of all electronic records maintained by the agent to the Clerk.
- ~~(b) The clerk shall maintain a duplicate of all electronic records maintained by agents appointed by the Court.~~

Comment

This rule is amended to add as new subdivision (b) the provisions of General Order M-409, relating to the use of claims and noticing agents, and to state in the rule the link to the Court's website where practitioners may access the governing protocols. The substance of former subdivision (b) has been deleted. The Clerk does not maintain duplicate electronic records of the claims register held by the claims and noticing agent. Such claims register is delivered to the Clerk upon the closing of the case. General Order M-409 will be abrogated and replaced by this local rule.

Rule 5076-1. DEPOSIT FOR COURT REPORTING EXPENSES - Repealed [Effective Date]

~~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 abrogated because court reporters are no longer used in Court proceedings.

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

(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 Guidelines for the Conduct of Asset Sales issued by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/guidelines-asset-sales>). ~~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

This rule is amended to specify the title of the procedures promulgated by General Order M-383 and to state in the rule the link to the Court's website where practitioners may access the governing procedures. The procedures set forth in the *Guidelines for the Conduct of Asset Sales* may be amended by the Court after giving notice and opportunity for comment as is appropriate. General Order M-383 will be abrogated and replaced by this local rule.

Rule 6005-1 AUCTIONEERS

(g) ~~*Repealed 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

Subdivision (g) of this rule is repealed so that the United States Trustee Guidelines governing auctioneers are not incorporated by reference into the Local Bankruptcy Rules.

Rule 6006-1. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

(b) ~~Motion to Assume~~Assumption of Executory Contract or Unexpired Lease in Chapter 7 Case.

- (1)** 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.
- (2)** The assumption by an individual debtor of a lease of personal property that is no longer property of the estate pursuant to section 365(p)(2)(A) of the Bankruptcy Code shall not require the approval of the Court. Any party in interest that requests an order of the Court approving such an assumption shall in its request prominently state the reasons for seeking

such an order notwithstanding its knowledge that an order of the Court is not required for such assumption.

Comment

This rule is amended to include in the Local Rules the provisions of General Order M-415, which relates to an individual debtor's assumption of a lease of personal property under § 365(p) of the Bankruptcy Code. General Order M-415 will be abrogated and replaced by this local rule.

Rule 7016-2. INITIAL PRETRIAL CONFERENCE

The Court shall schedule an initial pretrial conference in all adversary proceedings. The plaintiff shall provide notice to all parties to the adversary proceeding of the date and time scheduled for the initial pretrial conference, such notice to be given by electronic means to registered ECF filers and by mail to non-ECF filers. Subsequent pretrial conferences may be scheduled in open court or by the Clerk as provided above. If a subsequent pretrial conference is scheduled in open court, the plaintiff shall file a notice of the date and time of such pretrial conference no later than one day after it was scheduled in open court.

Comment

This rule is added to require a pretrial conference in every adversary proceeding and to specify the procedures for giving parties notice of the initial conference and any subsequent conferences.

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 with the Court, on the docket of the case, and served on all other parties, on the CM/ECF system, setting forth the issues to be presented in the motion and the grounds for relief. Unless the Court otherwise directs, the letter shall not exceed two pages in length.

Comment

This rule is amended to impose a page limit on any letter requesting a pre-motion conference as a prerequisite for filing a motion for summary judgment. This limit will produce greater efficiency and will prevent parties from extensive briefing of issues in the letter requesting a pre-motion conference.

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 ~~at the~~ motion, and the time for serving any responsive papers, shall be included in the upper right-hand corner of the caption of the motion and all related pleadings. In addition, the CM/ECF docket number to which the filing relates shall be included in the upper right-hand corner of the caption of all responsive papers.

Comment

This rule is amended to require that all motions and related pleadings include the deadline for filing objections or other responsive papers in the caption. In addition, for all objections or other responsive papers, the electronic case file docket number for the proceeding must be included in the caption.

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

(b) All Other Motions. ~~Unless the Court orders otherwise, Except as otherwise ordered by the Court or required by the Bankruptcy Rules,~~ all other motion papers shall be served at least 14 days before the return date. Where such service is made at least 14 days before the return date, any answering papers shall be served so as to ensure actual receipt not later than seven days before the return date, unless the Court orders otherwise.

Comment

The Bankruptcy Rules require minimum notice periods longer than 14 days with respect to certain proposed actions. For example, Bankruptcy Rule 2002(a)(3) requires at least 21 days' notice of the hearing on approval of a compromise and settlement. Therefore, if a trustee moves for approval of a compromise and settlement under Rule 9019(a), the motion papers must be served at least 21 days before the hearing. Similarly, Rule 2002(a)(2) requires at least 21 days' notice of a proposed use, sale or lease of property, unless the Court shortens the time. The first sentence of subdivision (b) of this Local Rule is amended to recognize such time periods required by the Bankruptcy Rules.

The second sentence of subdivision (b) is amended to clarify that the 7-day requirement for service of answering papers applies when motion papers are served at least 14 days before the return date, even if the motion is served more than 14 days before the return date to comply with an applicable Bankruptcy Rule. For example, if a motion for approval of a compromise and settlement is served 21 days before return date to comply with Bankruptcy Rule 2002(a)(3), the answering papers must be served so as to ensure actual receipt at least seven days before the return date, unless the Court orders otherwise.

Rule 9006-2. AUTOMATIC EXTENSION OF TIME WHEN TIMELY MOTION TO EXTEND TIME IS FILED

Unless otherwise provided in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or order of the Court, when a motion to extend the time to take any action is filed before the expiration of the period prescribed by the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules, or order of the Court, the time shall automatically be extended until the Court resolves the motion to extend the time. An automatic extension under this rule shall not require the issuance or entry of an order extending the time.

Comment

This rule is added as an exercise of the Court's discretion to extend time under Bankruptcy Rule 9006(b) and to obviate the need for a "bridge order" in certain circumstances.

9011-1 . SIGNING OF PAPERS

- (b) The signing of documents filed electronically shall be governed by the ~~applicable standing order on electronically filed cases~~ Electronic Filing Procedures issued by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/ecf-procedures>). An original signed copy of the filing shall be maintained in the attorney's files.

Comment

This rule is amended to include in the Local Bankruptcy Rules the provisions of General Order M-399 relating to the procedures for electronic filing , signing and verification of documents. General Order M-399 will be abrogated and replaced by this local rule.

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(b), § 363(c)(2)(B) or § 364 of the Bankruptcy Code;
- (d) the motion requests the Court's approval of rejection or assumption of an unexpired lease of real property under § 365(a) of the Bankruptcy Code, and a timely objection thereto is filed; or
- (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;
- (f) **Repealed.** ~~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

Subdivision (f) of this rule is abrogated. Since this rule was adopted in 2004, there have been no general orders issued under subdivision (f), which could make this paragraph misleading to practitioners. If the Court wants to specify another kind of contested matter in which an evidentiary hearing will be held at the first scheduled hearing, the Court could do so by amending this rule. Therefore, subdivision (f) is not necessary to give the Court flexibility to expand the list set forth in subdivisions (a) through (e).

Rule 9019-1. ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution shall be conducted in the manner required by ~~any applicable standing order of the Court,~~ the Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings, which shall be available on the Court's web site (<http://www.nysb.uscourts.gov/content/mediation-procedures>).

Comment

This rule is amended to specify the title of the procedures promulgated by General Order M-390 and to state in the rule the link to the Court's website where practitioners may access the governing procedures. The *Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings* may be amended by the Court after giving notice and opportunity for comment as is appropriate. General Order M-390 will be abrogated and replaced by this local rule.

Rule 9019-2. LOSS MITIGATION FOR INDIVIDUAL DEBTORS WITH RESIDENTIAL REAL PROPERTY AT RISK TO FORECLOSURE

Loss mitigation procedures for the facilitation of consensual resolutions for individual debtors whose residential real property is at risk of loss to foreclosure shall be governed by the *Loss Mitigation Program Procedures* promulgated by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/loss-mitigation>).

Comment

This rule is promulgated to include in the Local Rules a reference to the *Loss Mitigation Program Procedures* established by General Order M-413. General Order M-413 will be abrogated and replaced by this local rule.

Rule 9070-1. COPIES OF FILED PAPERS

- (a) *Copy for United States Trustee.* A hard copy of all papers filed with the Court, including those filed electronically, other than proofs of claim, shall be submitted to the Clerk for transmittal to the United States Trustee.
- (b) *Chambers Copy.* Unless the Court directs otherwise, A a copy of all ~~papers~~ pleadings filed with the Court, other than proofs of claim, shall be marked "Chambers Copy" and delivered or mailed ~~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

Subdivision (b) is amended to reduce the amount of paper submitted as chambers copies. Unless the Court directs otherwise, only pleadings, rather than all papers, must be delivered to chambers under this rule. The rule also is amended to permit the mailing of chambers copies to the Court and eliminates the requirement that papers must be delivered in unsealed envelopes.

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

(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~~ conform substantially to the appropriate form following this rule.

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

- (1) *Use.*** Unless the Court orders otherwise, where ~~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 conforming substantially to the appropriate form following this rule. ~~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);

(H) Application to approve a loan modification under Local Bankruptcy Rule 9019-2;

(I) Any other type of motion, application, or objection as ordered by the Court in the particular case.

(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.~~

(d) The Court shall consider a motion, application, objection, or proposed order made by notice of presentment under this rule on or after the date of presentment.

Comment

Subdivision (c)(1) is amended, and paragraph (c)(1)(H) is added, to clarify the Court's discretion limit or expand the uses of notices of presentment in a particular case. Subdivision (d) is added to clarify that the Court need not enter the order on the day of presentment. Other revisions are stylistic.

[Note: Modification of Forms: (1) The following sentence will be added at the end of the second paragraph of both forms: "The ECF docket number to which the filing relates shall be included in

the upper right hand corner of the caption of all objections.”; and, (2) to the right of the caption of the “Notice of Presentment of ____ and Opportunity for Hearing,” under “Presentment Date and Time”, insert “Objection Deadline.”]

Rule 9075-2. CERTIFICATE OF NO OBJECTION

- (a) *Filing a Certificate of No Objection.*** If a motion or application has been filed and appropriate notice thereof has been served, and no objection, responsive pleading, or request for a hearing with respect to the motion or application has been filed or served before 48 hours after the expiration of the time to file an objection, counsel for the moving party may file a certificate of no objection (“CNO”), with a copy to chambers, stating that no objection, responsive pleading, or request for a hearing has been filed or served on the moving party. The CNO shall include the date of the filing and service of the motion or application, the deadline for filing an objection thereto, and a statement that counsel is filing the CNO not less than 48 hours after the expiration of such deadline.
- (b) *Representations to the Court.*** By filing the CNO, counsel for the moving party represents to the Court that the moving party is unaware of any objection, responsive pleading, or request for a hearing with respect to the motion or application, that counsel has reviewed the Court’s docket not less than 48 hours after expiration of the time to file an objection, and that no objection, responsive pleading, or request for a hearing with respect to the motion or application appears thereon.
- (c) *Entry of Order and Cancellation of Scheduled Hearing.*** Unless an individual debtor not represented by an attorney is a party in the proceeding, or a hearing is required under the Bankruptcy Code or Bankruptcy Rules notwithstanding the absence of an objection, responsive pleading, or request for a hearing, upon receipt of the CNO, the Court may enter the order accompanying the motion or application without further pleading or hearing and, once the order is entered, the hearing scheduled on the motion or application shall be cancelled without further notice.

Comment

This rule is added to provide a procedure for counsel to inform the Court that no timely objection, responsive pleading, or request for a hearing has been filed or served and to request that the Court enter the proposed order without a hearing. It applies only in situations where appropriate notice of a motion has been given in accordance with the Bankruptcy Rules, Local Bankruptcy Rules or order of the Court. This procedure is not available if the Court is required to hold a hearing notwithstanding the absence of an objection, responsive pleading, or request for a hearing, such as a hearing on confirmation of a plan in a chapter 11 or chapter 13 case or a hearing on reaffirmation of a debt requested by an individual debtor not represented by counsel.