

United States Bankruptcy Court  
Southern District of New York

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In the Matter of

ADOPTION OF AMENDMENTS TO  
LOCAL BANKRUPTCY RULES

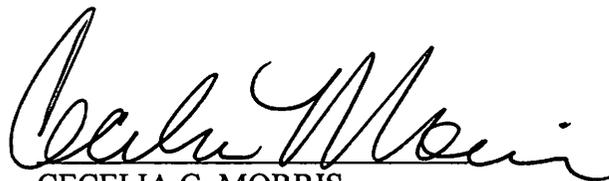
General Order M-506

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The Bankruptcy Judges of this District having considered proposed amendments to the Local Bankruptcy Rules; and the Court having given public notice and opportunity to comment thereon; and after consideration of the comments received the Bankruptcy Judges of this District having determined in accordance with Federal Rule of Bankruptcy Procedure 9029 and Federal Rule of Civil Procedure 83 that the annexed amendments to the Local Bankruptcy Rules should be adopted, and the effective date extended, it is

ORDERED that the annexed amendments to the Local Bankruptcy Rules be, and the same hereby are, adopted, effective December 1, 2016.

Dated: New York, New York  
November 29, 2016



CECELIA G. MORRIS  
Chief United States Bankruptcy Judge

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

**Rule 1002-1                    FILING OF PETITION – Amended August 1, 2013**

- (a) 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.
  
- (b) Notice Regarding Filing of a Chapter 11 or Chapter 15 Petition. To the extent practicable, when a prospective chapter 11 debtor or chapter 15 petitioner anticipates the need to seek orders for immediate relief, counsel for the debtor or petitioner shall contact the United States Trustee and the Clerk prior to filing a voluntary petition for relief under chapter 11 or chapter 15 of the Bankruptcy Code, for the purpose of advising the United States Trustee and the Clerk of the anticipated filing of the petition (without disclosing the identity of the debtor or petitioner) and the matters on which the debtor or petitioner intends to seek immediate relief.

**Comment**

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

Practitioners should refer to Local Bankruptcy Rule 5005-2, which governs filing by electronic means.

Subsection (b) of this rule was added in 2016. Subsection (b) is designed to alert the Court of impending motions seeking immediate first day relief and to give the United States Trustee time to review proposed, complex orders that may be entered at the conclusion of a “first day hearing,” including debtor in possession orders, and the like.

**Rule 1007-1                    DUTY TO FILE A LIST OF CREDITORS AND OTHER ENTITIES  
WITH THE PETITION UNDER BANKRUPTCY RULE 1007(a)(1) –  
Amended August 1, 2013**

- (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, or CD). 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 (i) 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, and (ii) payment of the applicable fee. 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 Bankruptcy Rule 9078-1.

### **Comment**

Filing requirements with respect to lists, statements, and schedules were governed by General Order M-192 until it was superseded by General Order M-408 in 2010.

This rule was amended in 2013 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). The amendments in 2013 also make mandatory certain procedures which General Order M-408 indicated that the debtor or the debtor's attorney "should" follow. Other clarifying amendments were also made to this rule. General Order M-408 was abrogated and replaced by this local rule in 2013.

Subsection (c)(1) of this rule was amended in 2016 to remove the reference to "diskette" as an acceptable electronic format. This format is no longer supported.

### **Rule 2002-2                    NOTICE OF PROPOSED ACTION OR ORDER WHEN NOT PROCEEDING BY MOTION – Amended December 1, 2009**

### **Comment**

Local Rule 2002-2 was repealed in 2016. The content of Local Rule 2002-2 was combined with Local Rule 9074-1, and now appears under Local Rule 9074-1(c).

### **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. If stored, electronic records shall be stored in their original electronic formats. Non-electronic records may be converted and stored in electronic format.

### **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 sections 363 and 554 of the Bankruptcy Code.

This rule was amended in 2016 to permit the electronic storage of documents. The estate may electronically store preexisting electronic records in their original formatting and may convert and store other documents in electronic format as well. The rule was intended to provide a more cost-effective alternative to store the debtor's books, records and papers.

**Rule 3011-1                    DISPOSITION OF UNCLAIMED FUNDS UNDER A CONFIRMED CHAPTER 11 PLAN**

- (a) A chapter 11 plan shall provide for the distribution of any unclaimed property that cannot be distributed pursuant to section 347(b) of the Bankruptcy Code, including that any unclaimed property may be
  - (1) Reallocated pursuant to the absolute priority rule;
  - (2) Reallocated for distribution pursuant to the plan's distribution scheme; or
  - (3) Donated to a not-for profit, non-religious organization designated to receive unclaimed property.
- (b) If a confirmed chapter 11 plan does not provide for the disposition of unclaimed property that cannot be distributed pursuant to section 347(b) of the Bankruptcy Code, such unclaimed property shall be reallocated for distribution pursuant to the plan's distribution scheme.
- (c) If a confirmed chapter 11 plan does not provide for the disposition of unclaimed property that cannot be distributed pursuant to section 347(b) of the Bankruptcy Code, and all claims have been paid in full, then the Court may, after notice and a hearing, approve a motion by the plan administrator, or similar appointee, to donate any unclaimed property to an appropriate not-for-profit, non-religious organization.

**Comment**

This rule was added in 2016. Section 347(b) governs the treatment of any property "remaining unclaimed" at the expiration of the time allowed for acts necessary for participation in a plan confirmed under chapter 9, 11 or 12. Section 1143 establishes a five year limit from the date the confirmation order is entered to take such

acts. Under section 347(b), any “security, money, or other property” remaining unclaimed at this time reverts to the debtor or to the entity that acquired the assets of the debtor under the plan.

Section 347(b) may not provide a satisfactory result in the liquidating chapter 11 case of a debtor in which no entity acquires most of the debtor’s assets and the debtor essentially ceases to exist. Although there may remain a shell entity to which assets can be returned, doing so may serve no useful purpose. The rule’s proposed solution is to require the inclusion of preemptive provisions in the chapter 11 liquidating plan, to provide for the alternative distribution of any unclaimed property within five years of the date the confirmation order is entered. This would avoid the five year distribution deadline created by section 1143 and the resulting application of section 347(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 (7) 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 and any ballots not counted. 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 (7) 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 section 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.

Subdivision (a) of the rule was amended in 2016 to require the proponent of the plan, or party authorized to receive votes on the plan, to include in the certification to the Court any ballots not counted. This was done to enhance transparency and increase access to voting results.

**Rule 3021-1                      POST-CONFIRMATION REQUIREMENTS IN CHAPTER 11  
CASES – Amended August 1, 2013**

- (a) Unless the Court orders otherwise, within fourteen (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 on presentment in accordance with Local Bankruptcy Rule 9074-1 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) Unless the Court orders otherwise, the plan proponent or responsible person under the plan shall submit to the Court a report whenever necessary, but no less than every six months after the entry of the order issued in accordance with subdivision (a) of this rule, identifying the actions taken under the order, the location of and steps taken to protect any funds or other property recovered on behalf of the estate, and any necessary revisions to the timetable.
- (c) Unless the Court orders otherwise, as a condition to serving as a liquidating trustee or a successor trustee to a post confirmation liquidating, or similar trust, the liquidating plan

shall specify what steps the trustee shall take to monitor and ensure the safety of the trusts' assets.

### **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 former subdivision (b) and delete paragraph (3) of the former Post-Confirmation Order and Notice form contained in subdivision (c), each of which related to the post-confirmation 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 former Post-Confirmation Order and Notice form contained in subdivision (c) of this rule was amended in 2009 to change the time period from fifteen (15) to fourteen (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 thirty (30) days were changed so that the number of days is in multiples of seven (7), thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

This rule was amended in 2013 regarding post-confirmation requirements in chapter 11 cases. The "Post-Confirmation Order and Notice" form was abrogated.

Subsection (c) of this rule was added in 2016 to require the post-confirmation liquidating trustee to disclose the procedures that will be taken to secure the trusts' assets. Subsection (c) is not meant to expand or limit the scope of a trustee's fiduciary duties.

### **Rule 3022-1                    CLOSING REPORTS IN CHAPTER 11 CASES – Amended August 1, 2013**

Unless the Court orders otherwise, within fourteen (14) days after the estate is fully administered and the Court has discharged any trustee serving in the case, the debtor, trustee, or estate representative, shall file and serve upon the United States Trustee a closing report substantially in the form available on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/3022-1-report.docx>).

### **Comment**

This rule was amended in 2009 to change the time period from fifteen (15) to fourteen (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 thirty (30) days were changed so that the number of days is in multiples of seven (7), thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

This rule was amended in 2013 to conform to section 350(a) of the Bankruptcy Code. Prior to its amendment, the rule required a closing report within fourteen (14) days following “substantial consummation,” which required that distributions under the plan be commenced rather than completed. Despite substantial consummation, there may have remained unresolved claim allowance litigation, preference and fraudulent conveyance adversary proceedings, and other proceedings that should have been resolved before the case was 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 to enter a final decree closing the case after the estate is fully administered.

The amendment to this rule in 2013 also provides a link to the closing report form on the Court’s website.

This rule was amended in 2016 to allow any estate representative to file and serve the closing report on the United States Trustee.

**Rule 5009-1                      FINAL REPORT AND ACCOUNT AND CLOSING REPORT IN A  
CHAPTER 7 CASE – Amended August 1, 2013**

- (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 twenty-one (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 form available on the Court’s website (<http://www.nysb.uscourts.gov/sites/default/files/5009-1-b-report.docx>).
- (c) *Closing Report in a No Asset Case.* In a chapter 7 no asset case, the trustee shall file a No Distribution Report as a virtual docket text entry in accordance with the guidelines promulgated by the Office of the United States Trustee.

### **Comment**

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

Subdivisions (b) and (c) of this rule, added in 1996, complement section 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 twenty (20) to twenty-one (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 thirty (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.

Subsection (c) of this rule was amended in 2013 to clarify that a separate form need not be attached to the “No Distribution” docket entry in a no asset chapter 7 case.

Subsection (a) was stylistically revised in 2016 to offset the warning language required. No substantive change was intended.

### **Rule 5070-1                    OBTAINING A 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.

The title of this rule was amended in 2016. No substantive change was intended.

### **Rule 5075-1            CLERK'S USE OF OUTSIDE SERVICES AND AGENTS; CLAIMS AND NOTICING AGENTS – Amended August 1, 2013**

- (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)
  - (1) 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/sites/default/files/pdf/newClaimsAgentsProtocol.pdf>).
  - (2) 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.
  - (3) 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 request of the Clerk, the agent shall provide a copy of all electronic records maintained by the agent of the Clerk and shall provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge.
- (d) The order providing for the retention of an agent under this rule shall provide for (i) the discharge of the agent at the conclusion of the case, or as otherwise provided by entry of an additional order by the Court, and (ii) the disposition of any records, documents and

the like, that have been provided or delivered to such agent, whether in paper or electronic form in accordance with the *Protocol for the Employment of Claims Agents*.

### **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.

This rule was amended in 2013 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 was abrogated and replaced by this local rule in 2013.

Subsection (b) of this rule was stylistically revised in 2016. No substantive change was intended.

Subsection (c) of this rule was amended and subsection (d) was added in 2016 to require open access to claims registries in accordance with existing requirements and Clerk's Office procedures, as well as section 107 of the Bankruptcy Code and Bankruptcy Rules 3002(b) and 5005(a).

### **Rule 6004-1 SALES OF PROPERTY, APPRAISALS, AND AUCTIONS – Amended August 1, 2013**

- (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 (7) 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 section 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 (6) 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 (1) 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 (1) 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 section 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 fourteen (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 twenty-one (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 fourteen (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 9074-1(c) and that no timely objection has been filed.

- (j) *Compliance with Guidelines of the Court.* 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 by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/6004-1-j-Guidelines.pdf>).

### **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 (5) to seven (7) days, and subdivision (b) of this rule was amended to change the time period from ten (10) to fourteen (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 thirty (30) days were



**Rule 7030-1                    DEPOSITIONS UPON ORAL EXAMINATION MORE THAN 100  
MILES FROM COURTHOUSE**

If a proposed deposition upon oral examination is sought to be taken at a location more than one hundred (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.

This title of this rule was stylistically amended in 2016 to conform to the language used in Local Rule 7027-1. No substantive change was intended.

**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 Rule 26(a)(1) of the Federal Rules of Civil Procedure.
- (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 with respect 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 fourteen (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 ten (10) to fourteen (14) days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Bankruptcy Rules. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than thirty (30) days were changed so that the number of days is in multiples of seven (7), thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

Subsection (e)(2) was stylistically amended in 2016. No substantive change was intended.

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. The Court may also grant any party's request to submit counter-findings and conclusions, which shall be served on all other parties within the time fixed by the Court.

#### **Comment**

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

This rule was amended in 2016 to give the Court the power to affirmatively authorize the submission of counter-findings and conclusions. The previous version of this rule allowed the parties to submit counter-findings and conclusion by right, unless the Court ordered simultaneous submissions. The content of the record on appeal is no longer limited by this rule.

#### **Rule 8009-1                    RECORD ON APPEAL – Amended December 1, 2014**

- (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**

This rule is derived from Former Local Bankruptcy Rule 8007-1 and was renumbered to conform to the 2014 amendments to Part VIII of the Bankruptcy Rules.

In 2016, this comment was edited to clarify that any disputes relating to the content of the record on appeal shall be decided in accordance with Bankruptcy Rule 8009(e).

**Rule 8010-1 NOTICE TO THE BANKRUPTCY COURT OF THE FILING OF A PRELIMINARY MOTION WITH AN APPELLATE COURT**

Upon the filing of a preliminary motion, as defined in Federal Rule of Bankruptcy Procedure 8010(c), in the district court or court of appeals, that arises out of an order issued by this Court, the moving party shall also file the preliminary motion and notice thereof on this Court's CM/ECF system.

**Comment**

This rule was added in 2016. It is intended to provide notice to the bankruptcy court and all parties to the bankruptcy case of appellate motion practice relating to a decision or order entered in the bankruptcy case.

**Rule 9006-1 TIME FOR SERVICE AND FILING OF MOTIONS AND ANSWERING PAPERS – Amended August 1, 2013**

- (a) *Discovery-Related Motions.* Unless the Court orders otherwise, all motion papers under Bankruptcy Rules 7026 through 7037 shall be served at least seven (7) 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 (3) days before the return date.
- (b) *All Other Motions.* Except as otherwise ordered by the Court, or required by the Bankruptcy Rules, all other motion papers shall be served at least fourteen (14) days before the return date. Where service is made at least fourteen (14) days before the return date, any answering papers shall be served so as to ensure actual receipt not later than seven (7) days before the return date, and reply papers shall be served so as to ensure actual receipt not later than 4:00 p.m. three (3) days before the return date, unless the Court orders otherwise.
- (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 (5) to seven (7) days, and subdivision (b)

of this rule was amended to change the time period from ten (10) to fourteen (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 thirty (30) days were changed so that the number of days is in multiples of seven (7), thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The one (1)-day deadline in subdivision (a) was changed to three (3) days, and the three (3) day deadline in subdivision (b) was changed to seven (7) 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).

The Bankruptcy Rules require minimum notice periods longer than fourteen (14) days with respect to certain proposed actions. Although subdivision (b) is intended to enlarge the time for service of motions under Bankruptcy Rule 9006(d), it is not intended to shorten minimum time periods specified in the Bankruptcy Rules. For example, Bankruptcy Rule 2002(a)(3) requires at least twenty-one (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 was amended in 2013 to recognize such time periods required by the Bankruptcy Rules.

The second sentence of subdivision (b) was amended in 2013 to clarify that the seven-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.

This rule was amended in 2016 to provide that replies, while permissible, must be received by the court no later than 4:00 p.m. three (3) days before the hearing date. Days should be counted in accordance with Bankruptcy Rule 9006(a).

**Rule 9018-1                    MOTIONS TO PUBLICLY FILE REDACTED DOCUMENTS AND TO FILE UNREDACTED DOCUMENTS UNDER SEAL**

- (a) Unless otherwise required by these Local Rules, the Bankruptcy Rules, the Bankruptcy Code, or order of this Court, requests to file under seal shall consist of two parts: (i) a motion to seal and (ii) the documents to be sealed.
- (b) The motion to seal shall include:
  - (1) the grounds for sealing;
  - (2) the identity of any parties other than the moving party who will have access to the documents to be sealed;
  - (3) the duration of the seal;
  - (4) the time when the movant will either unseal the documents or retrieve the documents at the conclusion of the matter;
  - (5) a redacted copy of the documents sought to be sealed with only those redactions necessary to preserve confidentiality, made in good faith; and
  - (6) a proposed order that contains language indicating the order is without prejudice to the rights of any party in interest, or the United States Trustee, to seek to unseal the documents, or any part thereof.
- (c) Upon filing the motion to seal, the moving party must hand deliver a copy of the motion to seal and the unredacted documents sought to be sealed to the Clerk’s Office. The documents must be conspicuously marked “FILED UNDER PENDING MOTION TO SEAL.”

**Comment**

This rule was added in 2016 to provide a uniform standard procedure for how to file motions under seal. The rule distinguishes between the motion, which should be filed publicly

on the docket, and the documents to be sealed. The motion should include a redacted copy of the documents to be sealed. The time to file and serve the underlying motion for which purpose the motion to seal is being made should be in accordance with all applicable rules pertaining to service of the underlying motion.

**Rule 9027-1**                    **STATEMENT IN NOTICE OF REMOVAL REGARDING  
CONSENT TO ENTRY OF ORDERS OR JUDGMENT IN CORE  
PROCEEDING – New April 2012**

**Comment**

This rule was repealed in 2016 in light of Bankruptcy Rule 9027.

**Rule 9027-2**                    **STATEMENT REGARDING CONSENT TO ENTRY OF ORDERS  
OR JUDGMENT IN CORE PROCEEDING – New April 2012**

**Comment**

This rule was repealed in 2016 in light of Bankruptcy Rule 9027.

**Rule 9033-1**                    **PROPOSED FINDINGS AND CONCLUSIONS IN CERTAIN CORE  
PROCEEDINGS – New April 16, 2012**

If the Court determines that it cannot enter a final order or judgment consistent with Article III of the United States Constitution in a particular proceeding referred to the Court and designated as core under section 157(b) of title 28, and the Court hears the proceeding, Rule 9033(a), (b), and (c) of the Federal Rules of Bankruptcy Procedure shall apply.

**Comment**

This rule was amended in 2016 to provide greater clarity. The final portion of the Local Rule previously read that if “the Court hears the proceeding, Rule 9033(a), (b), and (c) of the Federal Rules of Bankruptcy Procedure shall apply as if it is a non-core proceeding.” The amendment deletes the final phrase “as it if is a non-core proceeding.”

**Rule 9037-1****REDACTION OF PERSONAL DATA IDENTIFIERS**

- (a) *Compliance with Bankruptcy Rule 9037.* All documents filed with the Court shall comply with Bankruptcy Rule 9037.
- (b) *Responsibility for Redaction.* The responsibility for redacting personal data identifiers (as defined in Bankruptcy Rule 9037) rests solely with counsel, parties in interest and non-parties. The Clerk, or claims agent if one has been appointed, will not review each document for compliance with this Rule. In the event the Clerk, or claims agent if one has been appointed, discovers that personal identifier data or information concerning a minor individual has been included in a pleading, the Clerk, or claims agent if one has been appointed, is authorized, in its sole discretion, to restrict public access to the document in issue and inform the filer of the requirement to file a motion to redact.
- (c) *Motion to Redact Personal Identifiers.* Notwithstanding the requirements of Bankruptcy Rule 9037, a party seeking to redact personal identifiers from a document or a proof of claim, already filed with the court, shall file a motion to redact the personal identifiers, in accordance with CM/ECF procedures, that identifies the proposed document for redaction by docket number or if applicable, by claim number. If a party seeks to redact documents filed in multiple cases, such as proofs of claim, the party must open a miscellaneous proceeding by filing a motion to redact with a list of all affected cases and/or documents, subject to fees in accordance with the Bankruptcy Court Miscellaneous Fee Schedule. Prior to filing the motion to redact, the party must contact the Clerk's Office to request that the Clerk's Office restrict the original image containing the personal data identifiers from public view on the docket.
- (d) *Notice.* The filer shall include a certificate of service at the time the motion to redact is filed, showing service to the following recipients: the debtor, anyone whose personal information has been disclosed, the case trustee (if any) and the United States Trustee.
- (e) *Filing of Correctly Redacted Document or Claim.* Unless otherwise ordered by the court, the party seeking redaction shall file a correctly redacted document or proof of claim within twenty-one days of the granting of the motion.
- (f) *Filing Motions to Reopen in Closed Cases.* The granting of a motion to redact in a closed case is ministerial in nature and does not impact the administration of the case. For that reason, a party seeking redaction in a closed case does not need to file a motion to reopen the case, and no fee for reopening shall be collected by the clerk.
- (g) *Redaction Fee.* In accordance with the provisions of the Bankruptcy Court Miscellaneous Fee Schedule, the party filing a motion to redact personal identifiers from a document or proof of claim must pay a fee for filing such motion to redact in each case.

## Comment

This rule was added in 2016 to make clear that redactions are the responsibility of the filing party. The rule also addresses situations involving the need to redact the same information filed in multiple cases.

The fee for filing a motion to redact does not apply to transcripts. Pursuant to the Judicial Conference Policy, attorneys or any other entity requesting the redaction of personal identifiers on a transcript must file a *Notice of Intent to Request Redaction*. The procedures for redacting transcripts are available on the court's website.

(<http://www.nysb.uscourts.gov/sites/default/files/pdf/TranscriptRestrictionsRedactionGuidelines.pdf>)

### **Rule 9074-1                    SUBMISSION, SETTLEMENT OR PRESENTMENT OF ORDER, JUDGMENT, OR DECREE – Amended August 1, 2013**

- (a) *Submission or Settlement of an 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 fourteen (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 fourteen (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 (1) day notice is required of all counterproposals. Unless the Court orders otherwise, no proposed or counter-proposed 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 Motion upon Presentment and Opportunity for Hearing with Respect to Certain Motions, Applications, and Objections*
- (1) *Use.* Unless the Court orders otherwise, 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 conforming substantially to the appropriate form following 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 section 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 section 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) Request for a post-confirmation order pursuant to Local Bankruptcy Rule 3021-1;
  - (J) Application to employ a professional person pursuant to section 327(a) of the Bankruptcy Code; and
  - (K) 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 (3) 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.

- (c) *Notice of Proposed Action or Order When “Notice and a Hearing” are Required and a Motion is Not Mandatory*
- (1) *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:
- (A) 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;
  - (B) the date by which objections or responses to the proposed action or order shall be served and filed;
  - (C) 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
  - (D) 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.
- (2) *Time for Notice.* Unless the Court orders otherwise, if notice is to be given to all creditors under subdivision (1) of this rule, the notice shall be given at least twenty-one (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 (7) days prior to such date.
- (1) *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 (1) 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.
- (4) *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 (7) days prior to the date set for the hearing if at least twenty-one (21) days' notice has been given and (ii) at least one (1) day prior to the date set for the hearing if at least seven (7) [but less than twenty-one (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.

- (5) *Opportunity for a Hearing.* 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.
- (d) *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 (d)(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 (3) days' notice.
  - (3) *Form.* A notice of presentment of a proposed order shall conform substantially to the appropriate form following this ruling.
- (e) The Court shall consider a motion, application, objection, or proposed order made by notice of presentment under this Local Bankruptcy Rule on or after the date of presentment. Any motion, application, or proposed order made by notice of presentment under this Local Bankruptcy Rule shall include a copy of the proposed order. If there has been no objection or hearing date scheduled, and the presentment date has otherwise passed, the moving party shall promptly submit a copy of the proposed order to chambers.

### **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 (b)

of this rule, formerly subdivision (c), 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 (b)(1) of this rule, formerly subdivision (c)(1), 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 section 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 (3) 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 fifteen (15) to fourteen (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 thirty (30) days were changed so that the number of days is in multiples of seven (7), 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.

Subdivision (b)(1) of this rule, formerly subdivision (c)(1), was amended in 2013 to add items (H), (I) and (J), which permit the use of this procedure for applications to approve a loan modification and request for a post-confirmation order in a chapter 11 case and which clarify the Court's discretion to expand the uses of notices of presentment in a particular case.

Subdivision (e), formerly subdivision(d), was added in 2013 to clarify that the Court need not enter the order on the day of presentment. Other revisions were stylistic.

In 2016, Local Bankruptcy Rule 2002-2, governing notice of a proposed action or order when not proceeding by motion, was combined with Local Bankruptcy Rule 9074-1. What was Local Bankruptcy Rule 2002-2 is now Local Bankruptcy Rule 9074-1(c). Former subdivision (b) has been moved to the end of the rule, and is now subdivision (d). Former subdivision (c) has been moved up, and is now subdivision (b). What is now subdivision (c) used to be Local Bankruptcy Rule 2002-2. Former subdivision (d) has been moved down, and is now subdivision (e).

What is now Local Bankruptcy Rule 9074-1(c), previously Local Bankruptcy Rule 2002-2, 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, sections 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.

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

Subdivisions (c)(2) and (3), formerly subdivisions (b) and (d) of Local Rule 2002-2, were amended in 2009 to change the twenty (20) day time periods to twenty-one (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 thirty (30) days were changed so that the number of days is in multiples of seven (7), thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

The three (3) day deadline in subdivision (d) of this rule was amended to seven (7) days in 2009 to give parties more time to consider objections before the hearing.

In 2016, the title of Local Bankruptcy Rule 9074-1(a) was stylistically revised to refer to submission or settlement “of an” order. Substantively, subdivision (a) remains unchanged.

In 2016, pursuant to public comments received, Local Bankruptcy Rule 9074-1(b) was amended by adding a new subsection to the list of acceptable motions, applications or objections that may be done on presentment. The addition resulted in the relabeling of the catchall provision that was previously subsection (J), which now appears as subsection (K). New subsection (J) allows an application to employ a professional person under section 327(a) of the Bankruptcy Code to be done on presentment.

In 2016, the title of subsection (c) was revised to provide greater clarity. Instead of referring to “*Notice of Motion upon Presentment and Opportunity for Hearing with Respect to Certain Motions, Applications, and Objections,*” subsection (c) is now titled, “*Notice of Proposed Action or Order When “Notice and a Hearing” are Required and a Motion is Not Mandatory.*” No substantive change was intended.

In 2016, what was Local Bankruptcy Rule 2002-2 and is now Local Bankruptcy Rule 9074-1(c), was stylistically renumbered and amended to conform to its new placement in the text of the Local Bankruptcy Rules. This rule was also amended by adding subsection (c)(5). The purpose of this addition was to clarify that anything heard on presentment will not be set for a hearing.

In 2016, the numeral in subsection (d) was added to the period of days listed therein to conform to the general style of the Local Bankruptcy Rules.

In 2016, subdivision (e) was stylistically revised to clearly refer to “this Local Bankruptcy Rule,” instead of “this rule.” No substantive change was intended.