

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the matter:	X	
	X	
	X	GENERAL ORDER
ADOPTION OF AMENDMENTS TO	X	M-297
LOCAL BANKRUPTCY RULES	X	
	X	
	X	
	X	

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

NOW, it is

ORDERED, that the annexed Amendments to Local Bankruptcy Rules be, and the same hereby are adopted, effective August 2, 2004.

Dated: New York, New York  
July 7, 2004

/s/ Stuart M. Bernstein  
Chief Judge Stuart M. Bernstein

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

**RULE 1001-1. SHORT TITLE; APPLICABILITY**

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

(b) *Applicability.*

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

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

Comment

This rule is derived from Former Local Bankruptcy Rule 1.

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

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

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

From time to time, the Court may issue standing orders to supplement these Local Bankruptcy Rules, copies of which may be obtained from the Clerk and are available on the Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

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

**RULE 1002-1. FILING OF PETITION**

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

## Comment

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

Local Bankruptcy Rule 5005-2 permits filing by electronic means to the extent permitted by any standing orders issued by the Court. Procedures for filing by electronic means are governed by General Order M-242 and any amendments or supplemental standing orders of the Court. Copies of General Order M-242, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

### **RULE 1007-1. LIST OF CREDITORS AND EQUITY SECURITY HOLDERS**

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

## Comment

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

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

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

- (1) the nature of the debtor's business and a concise statement of the circumstances leading to the debtor's filing under chapter 11;
- (2) if the case originally was commenced under chapter 7 or chapter 13, the name and address of any trustee appointed in the case and, in a case originally commenced under chapter 7, the names and addresses of the members of any creditors' committee;
- (3) the names and addresses of the members of, and attorneys for, any committee organized prior to the order for relief in the chapter 11 case, and a brief description of the circumstances surrounding the formation of the committee and the date of its formation;
- (4) the following information with respect to each of the holders of the 20 largest unsecured claims, excluding insiders: the name, the address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), the telephone number, the name(s) of person(s) familiar with the debtor's account, the amount of the claim, and an indication of whether the claim is contingent, unliquidated, disputed, or partially secured;
- (5) the following information with respect to each of the holders of the five largest secured claims: the name, the address (including the number, street, apartment or suite number, and zip

code, if not included in the post office address), the amount of the claim, a brief description and an estimate of the value of the collateral securing the claim, and whether the claim or lien is disputed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Proposed Case Conference Order.* There shall be submitted to the Court with the chapter 11 petition a proposed case conference order in the following form:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

ORDER SCHEDULING INITIAL CASE CONFERENCE

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

ORDERED, pursuant to 11 U.S.C. § 105(d), that an initial case management conference will be conducted by the undersigned Bankruptcy Judge in Room \_\_, United States Bankruptcy Court, [One Bowling Green, New York, New York 10004] [176 Church Street, Poughkeepsie, New York, 12601] [300 Quarropas Street, White Plains, New York, 10601] on \_\_\_\_\_, \_\_\_\_, at \_\_: \_\_ \_\_.m., or as soon thereafter as counsel may be heard, to consider the efficient administration of the case, which may include, *inter alia*, such topics as retention of professionals, creation of a committee to review budget and fee requests, use of alternative dispute resolution, timetables, and scheduling of additional case management conferences; and it is further

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

claims), the holders of the five largest secured claims, any postpetition lender to the Debtor, and the United States Trustee, and shall promptly file proof of service of such notice with the Clerk of the Court.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, \_\_\_\_\_

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UNITED STATES BANKRUPTCY JUDGE

Any initial conference shall be conducted approximately 30 days after the filing of the petition or at such other time as the Court may direct.

Comment

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

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

**RULE 1007-3. DEBTOR'S CORPORATE OWNERSHIP STATEMENT**

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

Comment

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

**RULE 1073-1. ASSIGNMENT OF CASES AND PROCEEDINGS**

(a) *Cases.* Where the street address of the debtor set forth on the petition is in (i) New York County or Bronx County, the Clerk shall assign the case to a Judge sitting in New York County;

(ii) Rockland County or Westchester County, the Clerk shall assign the case to a Judge sitting in Westchester County; or (iii) Dutchess County, Orange County, Putnam County, or Sullivan County, the Clerk shall assign the case to a Judge sitting in Dutchess County. No case assignment will be based upon a post office box address. Where more than one Judge is sitting in a county, cases, other than chapter 13 cases, shall be assigned by random selection so that each Judge shall be assigned approximately the same number of cases. The Judges may direct that chapter 13 cases be referred to the same Judge or Judges. The Clerk shall have no discretion in determining the Judge to whom any case is assigned; the action shall be solely ministerial.

(b) *Cases Involving Affiliates.* Cases involving debtors that are affiliates shall be assigned to the same Judge.

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

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

(e) *Adversary Proceedings or Contested Matters in Cases Pending Outside of this Court.* An adversary proceeding or contested matter that does not arise out of a case pending in this Court shall be designated by the Clerk to an office of the Clerk in New York County, Westchester County, or Dutchess County. In making the designation, the Clerk shall take into consideration the residence of the defendant, the convenience of litigants, counsel, and witnesses, and the place where the cause of action arose. Unless the Court orders otherwise, the county designated by the Clerk shall be the place of trial and all other proceedings. The designation shall be made at the time of commencement or transfer of the adversary proceeding or contested matter, and the Clerk shall give prompt notice thereof to the parties or their counsel. After the designation, the adversary proceeding or contested matter shall be assigned to a Judge in the manner provided in subdivision (a) of this rule. Objections, if any, to the designation shall be made, on notice to opposing counsel, before the Judge to whom the adversary proceeding or contested matter has been assigned.

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

#### Comment

This rule is derived from Former Local Bankruptcy Rule 5. This rule was amended in 2004 to eliminate the use of a post office box address as the basis for case assignment.

### **RULE 2016-1. COMPENSATION OF PROFESSIONALS**

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

#### Comment

Guidelines for fees and disbursements are governed by General Order M-151 and any amendments or supplemental standing orders of the Court. Copies of General Order M-151, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

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

- (a) *General*. An attorney who may practice in the District Court pursuant to Civil Rule 1.3(a) and (b) of the Local District Rules may practice in this Court.
- (b) *Pro Hac Vice*. Upon motion to the Court, a member in good standing of the bar of any state or of any United States District Court may be permitted to practice in this Court in a particular case, adversary proceeding, or contested matter.
- (c) Repealed.
- (d) *Pro Se Designation of Address*. An individual appearing *pro se* shall include the individual's residence address and telephone number in the individual's initial notice or pleading.
- (e) *Withdrawal as Attorney of Record*. An attorney who has appeared as attorney of record may withdraw or be replaced only by order of the Court for cause shown.
- (f) *Exceptions*. Rule 2090-1 shall not apply to (i) the filing of a proof of claim or interest, or (ii) an appearance by a child support creditor or such creditor's representative.

Comment

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

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

**RULE 3003-1. REQUESTS FOR ORDERS ESTABLISHING DEADLINES FOR FILING CLAIMS IN CHAPTER 11 CASES**

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

Comment

Procedures for requesting deadlines for filing claims, traditionally known as “bar dates,” are governed by General Order M-279 and any amendments or supplemental standing orders of the Court. Copies of General Order M-279, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

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

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

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

(b) *Notice and Hearing for Attorney's Fees to be Treated as Administrative Expense.* If the compensation, or any portion thereof, of the attorney for a chapter 13 debtor is to be treated as an administrative expense under the plan, the attorney shall provide adequate notice of that fact to the trustee, the United States Trustee, and all creditors. The notice shall be deemed adequate if the plan, or a summary of the plan, is transmitted timely to all parties in interest and states with particularity the timing and amount of any payments to be made to the attorney.

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

Comment

The first sentence of subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 61; the balance of the subdivision was added in 1997. Subdivision (a) contemplates that in a chapter 13 case, the Clerk will provide notice of a debtor's application to extend the three year plan payment period pursuant to § 1322(d) of the Bankruptcy Code, provided that the debtor has filed both a plan and an application to extend the three year payment period contemporaneously with the filing of the chapter 13 petition. If the debtor does not file both a plan and such



progress made toward (i) consummation of the plan under 11 U.S.C. § 1101(2), (ii) entry of a final decree under Rule 3022 of the Federal Rules of Bankruptcy Procedure, and (iii) case closing under 11 U.S.C. § 350; it is therefore

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

(1) Periodic Status Reports. Subject to the requirements set forth in paragraph 5 of this Order and 11 U.S.C. § 1106(a)(7), the Responsible Party shall file, within 45 days after the date of this Order, a status report detailing the actions taken by the Responsible Party and the progress made toward the consummation of the plan. Reports shall be filed thereafter every January 15th, April 15th, July 15th, and October 15th until a final decree has been entered.

(2) Notices. The Responsible Party shall mail a copy of the confirmation order and this Order to the Debtor, the attorney for the Debtor, all committees, the attorney for each committee, and all parties who filed a notice of appearance.

(3) Closing Report and Final Decree. Within 15 days following the distribution of any deposit required by the plan or, if no deposit was required, upon the payment of the first distribution required by the plan, the Responsible Party shall file a closing report in accordance with Local Bankruptcy Rule 3022-1 and an application for a final decree.

(4) Case Closing. The Responsible Party shall submit the information described in paragraph 3 herein, including a final decree closing the case, within six calendar months from the date of the order confirming the plan. If the Responsible Party fails to comply with this Order, the Clerk shall so advise the Judge and an order to show cause may be issued.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

#### Comment

This rule is derived from former Standing Order M-111. Where the circumstances warrant, the Court has the discretion to alter the time periods prescribed herein. This rule was amended in 2004 to repeal subdivision (b) and delete paragraph (3) of the form Postconfirmation Order and Notice contained in subdivision (c), each of which related to the postconfirmation requirement to pay to the Clerk any special charges that may be assessed by the Court. The Court no longer assesses such charges.

**RULE 4001-1. RELIEF FROM AUTOMATIC STAY**

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

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

Comment

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

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

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

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

**RULE 4001-3. REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT**

A request for use of cash collateral under § 363(c) of the Bankruptcy Code, or for authority to obtain credit under § 364 of the Bankruptcy Code, shall conform to any applicable standing order issued by the Court.

Comment

Procedures for requests for the use of cash collateral or to obtain credit are governed by General Order M-274 and any amendments or supplemental standing orders of the Court. Copies of General Order M-274, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

## **RULE 4003-1. EXEMPTIONS**

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

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

### Comment

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

## **RULE 5001-1 CLERK'S OFFICE: HOURS; AFTER HOURS FILING**

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

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

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

Under Former Local Bankruptcy Rule 8, papers filed in the District Court's night depository were deemed filed in the Court as of 8:30 a.m. the following business day. In accordance with Civil Rule 1.2 of the Local District Rules and Greenwood v. New York, 842 F.2d 636 (2d Cir.

1988), this rule deems papers deposited in the District Court's night depository to have been filed as of the date and time stamped thereon.

#### **RULE 5005-1. FILING PAPERS**

Except as provided in Local Bankruptcy Rule 1002-1, unless submitted by electronic means, all papers may be submitted for filing in the Clerk's office located in any of the three divisions of the Court identified in Rule 1073-1(a). However, all chambers copies required by Rule 9070-1(b) shall be submitted in the Clerk's office located where the Judge assigned to the case or proceeding sits.

Comment

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

#### **RULE 5005-2. FILING BY ELECTRONIC MEANS**

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

Comment

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

#### **RULE 5011-1. WITHDRAWAL OF REFERENCE**

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

Comment

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

#### **RULE 5070-1. OBTAINING RETURN DATE**

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

## Comment

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

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

### **RULE 6004-1. SALES OF PROPERTY, APPRAISALS, AND AUCTIONS**

(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 five days' written notice to any party with an interest in such property, the landlord of the premises on which the property is located, and such other parties as the Court may direct. The notice of any proposed sale of property of the estate having an aggregate gross value of at least \$2,500 shall include the time and place of the proposed sale, whether the sale will be public or private, and the terms and conditions of the proposed sale.

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

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

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

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

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

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

(2) prior to receiving bids, the auctioneer shall announce the terms of sale;

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

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

(d) *Joint Sales.*

(1) If the trustee and a secured party, or other third party having an interest in the property, desire to conduct a joint auction sale, or if the joint sale of property in more than one bankruptcy estate is anticipated to be more cost effective or beneficial for all the bankruptcy estates, the Court shall enter an order prior to the sale fixing the method of allocating the commissions and expenses of sale.

(2) The commissions and expenses incurred on behalf of one bankruptcy estate in a joint auction sale shall not be charged to any other estate unless the motion requesting the joint auction reveals the identity and number of any other estate participants in the joint auction sale, and how such commissions and expenses shall be apportioned among them.

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

(e) *Proceeds of Sale.* Upon receipt of the proceeds of sale, the auctioneer immediately shall deposit the proceeds in a separate account that the auctioneer maintains for each estate in accordance with the requirements of § 345(a) of the Bankruptcy Code. Unless the Court orders otherwise, payment of the gross proceeds of the sale, less the auctioneer's reimbursable expenses, shall be made promptly by the auctioneer to the trustee or debtor in possession, but in no event later than 10 days after the date on which the proceeds are received with respect to each item or lot sold.

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

(1) the time, date, and place of the sale;

(2) the gross dollar amount of the sale;

(3) if property was sold in lots, a description of the items in each lot, the quantity in each lot, the dollar amount received for each lot, and any bulk bid(s) received;

(4) an itemized statement of expenditures, disbursements, and commissions allowable under Local Bankruptcy Rule 6005-1, including the name and address of the payee, together with the original receipts or canceled checks, or true copies thereof, for the expenditures or disbursements. Where labor charges are included, the report shall specify the days worked and

the number of hours worked each day by each person and the last four digits of the person's social security number. If the canceled checks are not available at the time the report is filed, the report shall so state, and the canceled checks shall be filed as soon as they become available;

(5) where the auctioneer has a blanket insurance policy covering all sales conducted by the auctioneer, for which original receipts and canceled checks are not available, an explanation of how the insurance expense charged to the estate was computed;

(6) if any articles were withdrawn from the sale because of a third party claim of an interest therein, a separate itemized statement of the articles reflecting the names of such third parties;

(7) the names and addresses of all purchasers;

(8) the sign-in sheet, if any; otherwise, the approximate number of people attending the sale;

(9) the items for which there were no bids and the disposition of those items;

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

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

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

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

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

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

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

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

#### Comment

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

Subdivision (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 10 days of their receipt, even if the auction has not yet concluded. Unlike subdivision (e), which requires the turnover of proceeds with respect to each lot or item of property, subdivision (f) contemplates the filing of a report within 20 days after the auction has been concluded and the supplementing of such report when the proceeds are received thereafter. 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).

#### **RULE 6006-1. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

(b) *Motion to Assume Executory Contract or Unexpired Lease in Chapter 7 Case.* Unless the Court orders otherwise, in a chapter 7 case, a trustee moving to assume an executory contract or unexpired lease of residential real property or personal property of the debtor shall seek to obtain a return date for the hearing on the motion that is within 60

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

(c) *Motion to Assume Unexpired Lease of Nonresidential Real Property.* Unless the Court orders otherwise, in a case under any chapter, a debtor, debtor in possession, or trustee moving to assume an unexpired lease of nonresidential real property under which the debtor is the lessee shall seek to obtain a return date for the hearing on the motion that is within 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 debtor, debtor in possession, or the trustee files a motion to assume or to extend the time to assume or reject an unexpired lease of nonresidential real property, and the motion is filed not later than 60 days after the order for relief (or, if the time to assume or reject the unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than 14 days from the date of such filing, the time to assume or reject the unexpired lease will be extended automatically and without court order until the entry of the order resolving the motion.

(d) *Aircraft Equipment and Vessels.* Unless the Court orders otherwise, a debtor in possession or trustee moving for approval of an agreement to perform all obligations of the debtor pursuant to § 1110(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the motion that is within 60 days after the order for relief or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

(e) *Rolling Stock Equipment.* Unless the Court orders otherwise, a trustee moving for approval of an agreement to perform all obligations of the debtor pursuant to § 1168(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the motion that is within 60 days after the date of commencement of the case or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

#### Comment

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

§ 365(d)(1) of the Bankruptcy Code contemplates that a hearing on a motion by a chapter 7 trustee to assume an executory contract or unexpired lease of residential real property or personal property of the debtor ordinarily will take place within 60 days from the date

of the order for relief. Likewise, § 365(d)(4) of the Bankruptcy Code contemplates that a final hearing on a motion by a debtor, debtor in possession, or trustee to assume an unexpired lease of nonresidential real property of the debtor ordinarily will take place within 60 days from the date of the order for relief.

Under § 365(d)(1) of the Bankruptcy Code, in a chapter 7 case, the Court may, for cause, extend the 60-day time period for assuming or rejecting an executory contract or unexpired lease of residential real property or personal property. Similarly, under § 365(d)(4), the Court may, for cause, extend the 60-day time period for assuming or rejecting an unexpired lease of nonresidential real property. In 2004, subdivisions (b) and (c) of this rule were amended to avoid the necessity of obtaining a “bridge order” extending these time periods in the event that a timely motion to assume or a timely motion to extend the time was filed but not resolved by the Court before the expiration of the time to assume or reject the contract or lease. Adequate cause for an extension of time to assume or reject the executory contract or unexpired lease until the Court rules on the motion exists by virtue of the fact that a motion to assume or to extend the time was filed in a timely manner. Any party in interest objecting to the extension of time may request a hearing on an expedited basis. To prevent abuse of the automatic extension, the return date of the motion must be no later than 14 days after the motion is filed.

#### **RULE 7007.1-1. CORPORATE OWNERSHIP STATEMENT**

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

##### Comment

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

#### **RULE 7016-1. SUBMISSION OF MARKED PLEADINGS**

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

##### Comment

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

**RULE 7026-2. OPT-OUT FROM CERTAIN PROVISIONS OF RULE 26 OF THE FEDERAL RULES OF CIVIL PROCEDURE** - Repealed [August 2, 2004]

**RULE 7030-2. OPT-OUT FROM CERTAIN PROVISIONS OF RULE 30 OF THE FEDERAL RULES OF CIVIL PROCEDURE** - Repealed [August 2, 2004]

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

**RULE 7033-1. INTERROGATORIES**

(a) *Restrictions.* At the commencement of discovery, interrogatories will be restricted to those questions seeking names of witnesses with knowledge or information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location, and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, and information of a similar nature, to the extent such information has not already been provided under Fed. R. Civ. P. 26(a)(1).

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

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

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

(e) *Objections or Requests for Relief.*

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

(2) If an objection or request for relief is made to any interrogatory or portion thereof, the objection shall state all grounds with specificity. Any ground not stated in the objection

or request for relief within the time provided by the Bankruptcy Rules, or any extensions thereof, shall be deemed waived.

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

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

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

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

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

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

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

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

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

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

Comment

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

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.

**RULE 7033-2. OPT-OUT FROM CERTAIN PROVISIONS OF RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE - Repealed [August 2, 2004]**

**RULE 7034-2. OPT-OUT FROM CERTAIN PROVISIONS OF RULE 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE - Repealed [August 2, 2004]**

**RULE 7036-2. OPT-OUT FROM CERTAIN PROVISIONS OF RULE 36 OF THE FEDERAL RULES OF CIVIL PROCEDURE - Repealed [August 2, 2004]**

**RULE 7052-1. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

Comment

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

**RULE 7056-1. SUMMARY JUDGMENT**

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

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

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

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

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

#### Comment

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

Subdivisions (b) through (e) of this rule are derived from Former Local Bankruptcy Rule 13(h) and are an adaptation of Civil Rule 56.1 of the Local District Rules. The statement of material facts shall be sufficiently complete to permit the Court to render judgment on the claim or defense. These subdivisions were amended in 2004 to conform with the 2004 amendments to Local District Rule 56.1.

Compare Local Bankruptcy Rule 7052-1 (Proposed Findings of Fact and Conclusions of Law).

**RULE 7087-1. TRANSFER OF ADVERSARY PROCEEDINGS** - Repealed [August 2, 2004]

**RULE 8007-1. RECORD ON APPEAL**

(a) *Furnishing and Transmitting Record on Appeal.* Except as provided in subdivision (b) of this rule, a party filing a designation of items to be included in a record on appeal shall cause to be filed on the CM/ECF system, unless previously filed, a copy of each item designated and attached to the designation.

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

Comment

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

This rule was amended in 2004 to take into account new procedures for electronic filing.

**RULE 9001-1. DEFINITIONS**

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

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

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

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

(4) “Chief Judge” means the Chief Judge of the Court;

(5) “Clerk” means the clerk or deputy clerk of the Court;

(6) “CM/ECF” means the Case Management/Electronic Case File System implemented in this Court, sometimes referred to herein as “ECF”;

(7) “Court” means the United States Bankruptcy Court for the Southern District of New York;

(8) “District Clerk” means the clerk or deputy clerk of the District Court;

(9) “District Court” means the United States District Court for the Southern District of New York;

(10) “District Judge” means a United States District Judge appointed to, or sitting by designation in, the District Court;

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

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

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

(14) “Local District Rules” means the Local Rules for the United States District Court for the Southern and Eastern Districts of New York, as amended from time to time; and

(15) “United States Trustee” means the United States trustee or an assistant United States trustee for the Southern District of New York.

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

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

#### Comment

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

### **RULE 9004-1. FORM OF PAPERS**

(a) *Papers Submitted for Filing.* Papers submitted for filing shall

- (1) be plainly typed or printed;
- (2) not be bound or stapled;
- (3) have no erasures or interlineations which materially deface them; and
- (4) state on the face of the document:

(A) the name of the attorney for the filing party, followed by the initials of the attorney’s first and last name, followed by the last four digits of the attorney’s social security number or the

four-digit number that the attorney has duly registered with the District Clerk pursuant to Civil Rule 11.1(b) of the Local District Rules;

(B) the attorney's office and post office addresses; and

(C) the attorney's telephone number.

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

#### Comment

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

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

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

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

#### **RULE 9011-1. SIGNING OF PAPERS**

(a) All pleadings, motions, and other papers that are submitted for filing shall be signed by an attorney of record in the attorney's own name or, if there is no attorney, by the party. The name of the attorney or party shall be clearly printed or typed below the signature, together with the attorney's or party's address and telephone number. If signed by an attorney, the initials of the attorney's first and last name, followed by the last four digits of the attorney's social security number or the four-digit number that the attorney has duly registered with the District Clerk pursuant to Civil Rule 11.1(b) of the Local District Rules, shall appear immediately after the attorney's name.

(b) The initials of the attorney's first and last name, followed by the last four digits of the social security number of the attorney making an electronic filing or the four-digit number that the attorney has duly registered with the District Clerk pursuant to Civil Rule 11.1(b) of the Local District Rules, shall constitute the signature of the attorney for purposes of Bankruptcy Rule 9011. An original signed copy of the filing shall be maintained in the attorney's files.

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

## Comment

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

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

Attorneys who have been issued a CM/ECF system password by the office of the Clerk of the Bankruptcy Court and subsequently elect to use a four-digit number registered with the Clerk of the District Court pursuant to Civil Rule 11.1(b) of the Local District Rules should update their profile on record with the Clerk of the Bankruptcy Court by revising their attorney profile on the CM/ECF system.

### **RULE 9014-1. CONTESTED MATTERS**

Unless the Court orders otherwise, Rules 7(b) and 24 of the Federal Rules of Civil Procedure, as incorporated in Bankruptcy Rules 7007 and 7024, respectively, and Local Bankruptcy Rules 7005-1, 7007-1, 7016-1, 7024-1, 7026-1, 7027-1, 7030-1, 7031-1, 7033-1, 7034-1, 7036-1, 7052-1, 7055-1, 7055-2, and 7056-1, shall apply in contested matters.

## Comment

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

### **RULE 9014-2. FIRST SCHEDULED HEARING**

The first scheduled hearing in a contested matter will not be an evidentiary hearing at which witnesses may testify, unless:

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

#### Comment

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

#### **RULE 9015-1. JURY TRIALS**

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

#### Comment

§ 157(e) of title 28 provides that a Bankruptcy Judge may conduct a jury trial on proper demand with the consent of the parties to the proceeding if the District Court has specifically designated the Bankruptcy Court to exercise such jurisdiction. The District Court, by order dated December 7, 1994, has specifically designated the Bankruptcy Court to conduct jury trials pursuant to § 157(e). Bankruptcy Rule 9015(b) provides that the time for filing a statement of consent to a jury trial shall be specified by local rule.

This rule provides a 10-day period for filing the statement of consent, which runs from the service of the last pleading, as specified in Bankruptcy Rule 7007.

#### **RULE 9019-1. ALTERNATIVE DISPUTE RESOLUTION**

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

#### Comment

Procedures governing mediation programs in bankruptcy cases and adversary proceedings are governed by General Order M-143 and any amendments or supplemental standing orders of the Court. Copies of General Order M-143, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

## **RULE 9023-1. MOTIONS FOR REARGUMENT**

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

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

### Comment

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 13(j) and is an adaptation of Civil Rule 6.3 of the Local District Rules. Subdivision (b) of this rule is derived from Former Local Bankruptcy Rule 33 and is an adaptation of Civil Rule 12 of the Former District Rules.

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

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

## **RULE 9070-1. COPIES OF FILED PAPERS**

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

(b) *Chambers Copy.* A copy of all papers filed with the Court, other than proofs of claim, shall be marked "Chambers Copy" and delivered 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 business day.

### Comment

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