

United States Bankruptcy Court  
Southern District of New York

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In the Matter of

Amending General Order M-456

ADOPTION OF AMENDMENTS TO  
LOCAL BANKRUPTCY RULES

M-457

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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 August 1, 2013; and it is further

ORDERED that the following General Orders are abrogated and replaced by the amended Local Bankruptcy Rules as follows:

General Order M-408 is abrogated and replaced by Local Bankruptcy Rule 1007-1;

General Order M-323 is abrogated and replaced by Local Bankruptcy Rule 2002-4;

General Order M-406 is abrogated and replaced by Local Bankruptcy Rule 3015-1(c);

General Order M-384 is abrogated and replaced by Local Bankruptcy Rule 3015-1 and General Order M-455;

General Order M-385 is abrogated and replaced by Local Bankruptcy Rule 4001-1.1;

General Order M-382 is abrogated and replaced by Local Bankruptcy Rule 4002-1;

General Order M-338 is abrogated and replaced by Local Bankruptcy Rule 4004-2;

General Order M-409 is abrogated and replaced by Local Bankruptcy Rule 5075-1;

General Order M-415 is abrogated and replaced by Local Bankruptcy Rule 6006-1.

Dated: New York, New York  
July 1, 2013

/s/ 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 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).

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

**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, CD, or diskette). Reference should be made to *Procedures for Filing Creditors' List*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/content/procedures-filing-creditors-list>).
- (2) When amending a schedule to add a creditor or modify a creditor's address, the filing of the amended schedule shall be accompanied by (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 superceded 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.

### **Rule 1014-1                      TRANSFER OF CASES – Amended [August 1, 2013]**

Unless the Court orders otherwise, whenever a case is ordered transferred from this district, the Clerk, promptly after entry of the order, shall effectuate the transfer of the case to the transferee court.

### **Comment**

This rule is derived from Former Local Bankruptcy Rule 7 and is an adaptation of Civil Rule 83.1 of the Local District Rules. Although not expressly stated, this rule contemplates that whenever transfer of a case under the Bankruptcy Code is ordered by a District Judge, the District Clerk will transmit the order and related documents to the Clerk of the Bankruptcy Court.

This rule was amended in 2013 to eliminate the need for the Clerk to transmit certified copies or originals of documents in the age of electronic transmission. The District Court similarly amended Civil Rule 83.1 of the Local District Rules in recognition of the electronic filing of documents.

**Rule 2002-4                    NOTICE OF PETITION FOR RECOGNITION IN CHAPTER 15 CASE -  
New [August 1, 2013]**

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

**Comment**

This rule was added in 2013 to include in the Local Bankruptcy Rules the notice requirements relating to chapter 15 cases promulgated by General Order M-323, with stylistic changes to conform to Bankruptcy Rule 2002(q)(1). The second sentence was added so that parties have notice that the Court may, at the hearing on the petition for recognition of a foreign proceeding, schedule a case management conference to consider the efficient administration of the case. General Order M-323 was abrogated and replaced by this local rule in 2013.

**Rule 2004-1                    UNIFORM DEFINITIONS FOR EXAMINATIONS AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS UNDER RULE 2004 - New [August 1, 2013]**

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

**Comment**

This rule was added in 2013 to clarify that the uniform definitions set forth in Civil Rule 26.3 of the Local District Rules are applicable to examinations and the production of documents under Bankruptcy Rule 2004. Pursuant to Local Bankruptcy Rule 7026-1, the uniform definitions are applicable to discovery requests in cases and proceedings.

**Rule 2016-1    COMPENSATION OF PROFESSIONALS – Amended [August 1, 2013]**

- (a) A person requesting an award of compensation or reimbursement of expenses for a professional shall comply with the *Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases* promulgated by the Court, which shall be available on the Court’s website (<http://www.nysb.uscourts.gov/sites/default/files/2016-1-a-Guidelines.pdf>).
- (b) A person requesting an award of compensation or reimbursement of expenses for a professional shall use in connection with the application a form order that conforms to the *Order Granting Application(s) for Allowance of Interim/Final Compensation and Reimbursement of Expenses* promulgated by the Court, including any applicable schedules, which shall be available on the Court’s website (<http://www.nysb.uscourts.gov/sites/default/files/2016-1-b-order.docx>).
- (c) A person requesting an order establishing procedures for monthly compensation and reimbursement of expenses for professionals shall comply with the *Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals* promulgated by the Court, which shall be available on the Court’s website (<http://www.nysb.uscourts.gov/sites/default/files/2016-1-c-procedures.pdf>).

**Comment**

This rule was amended in 2013 to better refer to the guidelines, procedures, and form orders promulgated by General Orders M-389, M-412, M-427, and M-447, and to state in the rule the links to the Court’s website where practitioners may access them. These documents also may be obtained from the Clerk. The guidelines, procedures, and forms may be amended by the Court after giving notice and opportunity for comment as is appropriate.

**Rule 3003-1                    REQUESTS FOR ORDERS ESTABLISHING DEADLINES FOR FILING CLAIMS IN CHAPTER 11 CASES – Amended [August 1, 2013]**

A request for an order establishing a deadline for filing proofs of claim in a chapter 11 case shall conform to the *Procedural Guidelines for Filing Requests for Orders to Set the Last Date for Filing Proofs of Claim*, which shall available on the Court’s website (<http://www.nysb.uscourts.gov/sites/default/files/3003-1-guidelines.pdf>).

**Comment**

Procedures for requesting deadlines for filing claims, traditionally known as “bar dates,” were originally promulgated by General Order M-386.

This rule was amended in 2013 to better refer to the procedures promulgated by General Orders M-386, amended by General Order M-453 and to state in the rule the link to the Court's website where practitioners may access the governing procedures. These guidelines, which also may be obtained from the Clerk, may be further amended by the Court in the future after giving notice and opportunity for comment as is appropriate.

**Rule 3015-1**                    **CHAPTER 13 PLANS: MODEL PLAN AND CONFIRMATION ORDER; TREATMENT OF DEBTOR'S ATTORNEY'S FEES AS ADMINISTRATIVE EXPENSES; SERVICE – Amended [August 1, 2013]**

(a) *Model Plan and Confirmation Order.* In a chapter 13 case, the plan shall conform to the model Chapter 13 Plan adopted by the Court, which shall be available in the Clerk's office and on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/3015-1-plan.doc>), and the confirmation order shall conform to the model Confirmation Order adopted by the Court, which shall be available in the Clerk's office and on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/3015-1-order.doc>).

(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 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.* Unless the court orders otherwise, the debtor shall serve the plan and any amended plan that changes the treatment of any party on the chapter 13 trustee, the United States trustee, and all creditors at least 28 days, plus an additional three days if service is by mail, before the confirmation hearing. The debtor shall file timely proof of service in accordance with Local Bankruptcy Rule 9078-1.

**Comment**

Subdivision (a) of this rule was amended in 2013 to state in the rule the link to the Court's website where practitioners may access the referenced forms, which were originally promulgated by General Order M-384. General Order M-384 was abrogated and replaced by this Local Rule and General Order M-455.

Subdivision (c) of this rule was amended in 2013 to include the requirements established by General Order M-406, relating to service of chapter 13 plans. General Order M-406 was abrogated and replaced by this local rule.

**Rule 3018-2**                    **ACCEPTANCES OR REJECTIONS OF PLAN SOLICITED BEFORE PETITION IN CHAPTER 11 CASES – Amended [August 1, 2013]**

A party seeking to obtain confirmation of any plan proposed and accepted before the commencement of a chapter 11 case shall comply with the *Procedural Guidelines for Prepackaged Chapter 11 Cases*, which shall be available on the Court's website ([http://www.nysb.uscourts.gov/sites/default/files/change to3003-1-guidelines.pdf](http://www.nysb.uscourts.gov/sites/default/files/change%20to3003-1-guidelines.pdf))

### **Comment**

Procedures with respect to prepackaged chapter 11 plans were promulgated by General Order M-387. This rule was amended in 2013 to specify the title of the procedures promulgated by General Order M-387 and to state in the rule the link to the Court's website where practitioners may access the governing procedures. The procedures set forth in the *Procedural Guidelines for Prepackaged Chapter 11 Cases*, which also may be obtained from the Clerk, may be further amended by the Court after giving notice and opportunity for comment as is appropriate.

### **Rule 3020-1                    TIME FOR OBJECTING TO CONFIRMATION IN CHAPTER 9 AND CHAPTER 11 CASES – Amended [August 1, 2013]**

Unless the Court orders otherwise, objections to confirmation of a plan in a chapter 9 or chapter 11 case shall be filed not later than seven (7) days prior to the first date set for the hearing to consider confirmation of the plan.

### **Comment**

This rule, which is derived from Former Local Bankruptcy Rule 57, designates a fixed time for objecting to confirmation as permitted by Bankruptcy Rule 3020(b)(1). The three-day deadline was amended to seven (7) days in 2009 to give the Court and the parties more time to consider objections before the confirmation hearing.

Former subdivision (b) of this rule required disclosure of the circumstances surrounding the withdrawal of, or failure to prosecute, any objections to confirmation. This subdivision was abrogated in 2013 so as to leave to the Court's discretion on a case-by-case basis whether to require disclosure, and the manner and extent of such disclosure, of the terms of any agreement between the plan proponent and the objecting party relating to the withdrawal of, or the failure to prosecute, an objection to confirmation of a plan.

### **Rule 3021-1                    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.

### **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 postconfirmation requirement to pay to the Clerk any special charges that may be assessed by the Court. The Court no longer assesses such charges.

Paragraph (3) of the 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 9 and chapter 11 cases. The “Post-Confirmation Order and Notice” form was abrogated.

### **Rule 3022-1                    CLOSING REPORTS IN CHAPTER 11 CASES – Amended [June 27, 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 or trustee 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.

### **Rule 4001-1.1            PAYMENT AND CURE OF PRE-PETITION JUDGMENT OF POSSESSION INVOLVING RESIDENTIAL PROPERTY – New [August 1, 2013]**

- (a) A debtor is deemed to have complied with section 362(l)(1) of the Bankruptcy Code by:
- (1) Making the required certification by completing the four check boxes, including the landlord’s name and address, listed on the Voluntary Petition (page two) under the section entitled, “Certification by a Debtor Who Resides as a Tenant of Residential Property”; and
  - (2) Delivering to the Clerk, together with the Voluntary Petition (or within one day of the filing, if the Voluntary Petition is filed electronically):
    - (A) a certified or cashier’s check or money order, made payable to the lessor, in the amount of any rent that would become due during the thirty-day period after the filing of the petition; and
    - (B) a copy of the judgment of possession.
- (b) If the debtor complies with the requirements set forth in subdivision (a), the Clerk shall, within one day, send notice of compliance to the lessor who shall then have the option, exercisable no later than fourteen (14) days after the date of the notice, to consent to receive the check (in which event the lessor shall provide payment instructions), or file an objection to the debtor’s certification, which objection shall constitute a request for hearing. A lessor is deemed to have consented to receive the check if the lessor

does not respond within the fourteen (14) day deadline, in which event the Clerk shall send the check to the lessor at the address set forth in the debtor's certification.

### **Comment**

This rule was added in 2013 to include in the Local Bankruptcy Rules the requirements established by General Order M-385, which relate to the requirements set forth in section 362(l)(1) of the Bankruptcy Code. General Order M-385 was abrogated and replaced by this local rule in 2013.

### **Rule 4002-1                    DUTIES OF DEBTORS – PROCEDURES RELATING TO THE IMPLEMENTATION OF BANKRUPTCY CODE SECTION 521 – Amended [August 1, 2013]**

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

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

- (1)     The party in interest shall serve a copy of the request on the debtor's attorney and the debtor at the same time that the party in interest sends the request to the Court.
- (2)     If the debtor objects to the request within seven (7) days of service, the debtor's objection will be treated as a request for a hearing, which the Court shall schedule promptly.
- (3)     No order of dismissal will be entered until the debtor's objection has been resolved, except that nothing herein shall affect the right of any party in interest to seek dismissal, or the authority of the Court to dismiss the case, pursuant to any other provision of applicable bankruptcy law.

### **Comment**

This rule was amended in 2013 to include in the Local Bankruptcy Rules the provisions contained in General Order M-382, relating to section 521(a)(1)(B)(iv) and section 521(i)(2) of the Bankruptcy Code. Subdivision (a) of this rule expands the scope of General Order M-382 by making it applicable in chapter 12 cases, as well as in chapter 7 and chapter 13 cases. General Order M-382 was abrogated and replaced by this local rule in 2013.

**Rule 4004-2 DEBTOR’S CERTIFICATION CONCERNING DOMESTIC SUPPORT OBLIGATIONS IN A CASE UNDER CHAPTER 12 OR CHAPTER 13 –Amended [August 1, 2013]**

(a) In a chapter 12 or chapter 13 case, within thirty (30) days before the date on which the last payment is due under the plan, or when the debtor files a motion to request a hardship discharge under section 1228(b) or section 1328(b) of the Bankruptcy Code, whichever is earlier, the Standing Trustee shall furnish the debtor with a *Debtor’s Certification Regarding Domestic Support Obligations*, Director’s Procedural Form B283, which shall be available on the Court’s website (<http://www.nysb.uscourts.gov/official-bankruptcy-forms>).

(b) The debtor shall complete, sign, and return to the Standing Trustee the *Debtor’s Certification Regarding Domestic Support Obligations* when submitting the check for the last payment under the chapter 12 or chapter 13 plan or, if the debtor has filed a motion to request a hardship discharge, no later than the date of the hearing on the debtor’s motion. In a joint case, each debtor must complete and sign a separate *Debtor’s Certification Regarding Domestic Support Obligations*.

(c) The Standing Trustee shall attach the completed *Debtor’s Certification Regarding Domestic Support Obligations* when electronically filing the Notice of Request for a Discharge or, in a case in which the debtor seeks a hardship discharge, shall otherwise make it available on the docket of that case.

**Comment**

This rule was added in 2013 to include in the Local Bankruptcy Rules the provisions established by General Order M-338, relating to the debtor’s certifications regarding domestic support obligations. Though General Order M-338 provided that the Standing Trustee “should” furnish the debtor with the certification form, and “should” attach the completed form to the *Notice of Request for a Discharge*, this rule makes these provisions mandatory. General Order M-338 was abrogated and replaced by this local rule in 2013.

**Rule 4007-1 AUTOMATIC EXTENSION OF TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT IN EVENT OF AMENDMENT – Repealed [August 1, 2013]**

### **Comment**

This rule was abrogated in 2013. The procedures for extending the time to file a complaint objecting to the dischargeability of a debt are governed by Bankruptcy Rule 4007. The rights of a creditor that had not been scheduled in time to file a timely complaint to determine the dischargeability of a debt are governed by substantive law, including section 523(a)(3) of the Bankruptcy Code.

### **Rule 4008-1 REAFFIRMATION AGREEMENTS – Amended [August 1, 2013]**

A person filing a reaffirmation agreement shall adhere to the *Guidelines for Filing a Reaffirmation Agreement in the Southern District of New York*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/4008-1-guidelines.pdf>).

### **Comment**

This rule was added in 2013 to include in the Local Bankruptcy Rules the requirements established by General Order M-404, relating to reaffirmation agreements. The procedures set forth in the *Guidelines for Filing a Reaffirmation Agreement in the Southern District of New York* may be amended by the Court after giving notice and opportunity for comment as is appropriate. The *Guidelines*, which are available on the Court's website, also may be obtained from the Clerk.

### **Rule 5001-1 CLERK'S OFFICE: HOURS; AFTER HOURS FILING – Amended [August 1, 2013]**

Unless otherwise posted on the Court's website, the offices of the Clerk shall be open Monday through Friday, from 8:30 a.m. to 5:00 p.m., except on legal and Court holidays, and shall be closed on Saturdays and Sundays. When the Clerk's Office is closed, papers not filed electronically may be filed with the Court by depositing them in the night depository maintained by the District Clerk and are deemed filed as of the date and time stamped thereon. Any required fees for such filings shall be delivered to the Clerk's Office no later than noon on the next day.

### **Comment**

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

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

The District Clerk maintains a night depository at the United States Courthouse located at 500 Pearl Street, New York, New York. The filing of papers in the District Court's night depository is intended to be used where

exigent circumstances exist and is not intended as a regular alternative for filing papers with the Court during normal business hours or electronically at any time.

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

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

This rule was amended in 2013 to clarify that the times and days when the Clerk's Office is opened may be altered as posted on the Court's website.

#### **Rule 5005-2 FILING BY ELECTRONIC MEANS – Amended [August 1, 2013]**

Unless the Court directs otherwise, all attorneys practicing in the Court, including attorneys admitted pro hac vice, are required to file all pleadings, motions, or other documents (except documents to be placed under seal) by electronic means, and all such documents required to be signed or verified shall be signed or verified by electronic means, in each case consistent with the *Procedures for the Filing, Signing, and Verification of Documents by Electronic Means* issued by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/5005-2-procedures.pdf>). If electronic filing, signing, or verification is not feasible in a particular situation, the Court may provide reasonable accommodation or excuse the requirement that documents be filed, signed, or verified by electronic means under the particular circumstances.

#### **Comment**

This rule, which implements the authority contained in Bankruptcy Rule 5005(a), was amended in 2013 to clarify that all attorneys practicing in the Court are required to file, sign, and verify pleadings, motions, and other documents by electronic means, unless the Court directs otherwise in a particular case or the document is filed under seal. If electronic filing is not feasible in a particular situation, the Clerk may provide a reasonable accommodation or excuse the requirements of this rule under the particular circumstances.

This rule was also amended in 2013 to specify the title of the procedures promulgated by General Order M-399 and to state in the rule the link to the Court's website where practitioners may access the governing procedures governing filing, signing, and verifying papers by electronic means. The procedures also may be obtained from the Clerk. It is anticipated that these

guidelines will be amended from time to time to account for changes in technology or the law.

**Rule 5005-3 PAYMENT OF COURT FEES – Amended [August 1, 2013]**

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

**Comment**

This rule was added in 2013 to state the means and timing regarding payment of the filing fees, as well as the consequences of a failure to pay such fees.

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

## **Rule 5009-2                    CLOSING A CHAPTER 15 CASE – Amended [August 1, 2013]**

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

### **Comment**

This rule was added in 2013 to provide for the closing of a chapter 15 case, as well as reopening a case for cause.

The Bankruptcy Code and Bankruptcy Rules do not provide for the closing and reopening of a chapter 15 case, but impose certain reporting requirements on the foreign representative so that the Court is aware of the status of the case. In particular, section 1518 of the Bankruptcy Code imposes on the foreign representative the duty to promptly file a notice informing the Court of any substantial change in the status of the foreign proceeding or of the foreign representative’s appointment, and of any other foreign proceeding regarding the debtor. Bankruptcy Rule 2015(d) requires the filing of such reports within 14 days after the foreign representative becomes aware of such information. Under Bankruptcy Rule 5009(c), the foreign representative is also required to file and transmit to the United States Trustee a final report describing the nature and results of the foreign representative’s activities in the Court when the purpose of the foreign representative’s appearance in the Court is completed, and to give notice of

the report to certain parties. The foreign representative must file a certificate with the Court certifying that such notice has been given. Under Bankruptcy Rule 5009(c), if no objection has been filed within 30 days after the certificate is filed, there is a presumption that the case has been fully administered. At that time, the case should be closed. However, even in the absence of a certificate, the Court has the discretion, after notice and a hearing, to close the case if it finds that the purpose of the foreign representative's appearance in the case has been completed.

**Rule 5011-1 WITHDRAWAL OF REFERENCE –Amended [August 1, 2013]**

A motion for withdrawal of the reference shall be filed with the Clerk of the Bankruptcy Court. The movant shall obtain from the Clerk of the Bankruptcy Court the District Court civil case number and name of the District Judge assigned to the motion, and shall thereafter 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, consistent with the *Instructions for Filing a Motion to Withdraw the Reference*, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/5011-1-instructions.pdf>). 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).

This rule was amended in 2013 to clarify that the Bankruptcy Court Clerk now opens the motion to withdraw the reference on the District Court's electronic filing system. The movant must obtain the District Court civil case number and name of the District Judge assigned to the motion from the Clerk of the Bankruptcy Court, and thereafter file a copy of the motion and other specified papers with the Clerk of the District Court. The rule also has been amended to include a link to the *Instructions for Filing a Motion to Withdraw the Reference* on the Court's website.

**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) 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>). With court approval, the estate may retain a claims and noticing agent in accordance with such protocol in a case in which the number of creditors and equity security holders, in the aggregate, is less than 250. The costs of services provided by such agent shall be paid by the estate. When the case is closed, the claims and noticing agent shall deliver to the Clerk a copy of the claims register.
- (c) Upon request of the Clerk, the agent shall provide a copy of all electronic records maintained by the agent of the Clerk.

### **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.

### **Rule 5076-1                    DEPOSIT FOR COURT REPORTING EXPENSES – Repealed [August 1, 2013]**

### **Comment**

This rule was abrogated in 2013 because court reporters are no longer used in Court proceedings.

### **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 2002-2 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 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 business day deadline in subdivision (b)(2) of this rule was also amended in 2009 to delete the reference to “business” so that the time period will be consistent with the 2009 amendments to Bankruptcy Rule 9006(a).

Guidelines for the conduct of asset sales were promulgated by General Order M-383. This rule was amended in 2013 to specify the title of the procedures promulgated by General Order M-383 and to state in the rule the link to the Court’s website where practitioners may access the governing procedures. The procedures also may be obtained from the Clerk. The procedures set forth in the *Guidelines for the Conduct of Asset Sales* may be amended by the Court after giving notice and opportunity for comment as is appropriate.

**Rule 6005-1                      AUCTIONEERS – Amended [August 1, 2013]**

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

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

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

(A) 10% of any gross proceeds of sale up to \$50,000;

(B) 8% of any gross proceeds of sale in excess of \$50,000 but not more than \$75,000;

(C) 6% of any gross proceeds of sale in excess of \$75,000 but not more than \$100,000;

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

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

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

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

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

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

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

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

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

(f) *Application for Commissions.* An auctioneer shall file an application with the Court for approval of commissions on not less than seven (7) days' notice to the debtor, the trustee, the United States Trustee, and each committee. No application shall be granted unless the report of sale referred to in Local Bankruptcy Rule 6004-1(f) has been filed.

(g) *Repealed*

### **Comment**

This rule is derived from Former Local Bankruptcy Rule 41.

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

Subdivision (f) of this rule was amended in 2009 to change the time period from five (5) to seven (7) days. The purpose of the amendment was to conform the time period in this rule to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure. Throughout the Bankruptcy Rules, as well as the Local Bankruptcy Rules, most time periods that are shorter than 30 days were changed so that the number of days is in multiples of seven, thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

Subdivision (g) of this rule was repealed in 2013 so that the United States Trustee Guidelines governing auctioneers are not incorporated by reference into the Local Bankruptcy Rules.

### **Rule 6006-1 EXECUTORY CONTRACTS AND UNEXPIRED LEASES – Amended [August 1, 2013]**

(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 fourteen (14) days' notice, Local Bankruptcy Rule 9077-1 shall govern and an actual hearing shall be held.

(b) *Assumption of Executory Contract or Unexpired Lease in Chapter 7 Case.*

- (1) Unless the Court orders otherwise, in a chapter 7 case, a trustee moving to assume an executory contract or unexpired lease of residential real property or personal property of the debtor shall seek to obtain a return date for the hearing on the motion that is within sixty (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 sixty (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 fourteen (14) days from the date of such filing, the time to assume or reject the executory contract or unexpired lease shall be extended automatically and without court order until the entry of the order resolving the motion.

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

(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 one hundred twenty (120) days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the debtor, debtor in possession, or the trustee files a motion to assume or to extend the time to assume or reject an unexpired lease of nonresidential real property, and the motion is filed not later than one hundred-twenty (120) days after the order for relief (or, if the time to assume or reject the unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than fourteen (14) days from the date of such filing or, if the Court is unable, to schedule a return date within such fourteen (14) day period, or soon thereafter as the return date may be scheduled by the Court, the time to assume or reject the unexpired lease will be extended automatically and without court order until the entry of the order resolving the motion, except that the time for the debtor, debtor in possession, or trustee to assume or reject such unexpired lease shall not be extended beyond the date that is two hundred ten (210) days after the entry of the order for relief without the prior written consent of the landlord.

(d) *Aircraft Equipment and Vessels.* Unless the Court orders otherwise, a debtor in possession or trustee moving for approval of an agreement to perform all obligations of the debtor pursuant to section 1110(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the motion that is within sixty (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 section 1168(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the motion that is within sixty (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 sections 1110 and 1168 of the Bankruptcy Code.

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

addition, section 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 one hundred twenty (120) days from the date of the order for relief.

Under section 365(d)(1) of the Bankruptcy Code, in a chapter 7 case, the Court may, for cause, extend the sixty (60)-day time period for assuming or rejecting an executory contract or unexpired lease of residential real property or personal property. Similarly, under section 365(d)(4), the Court may, for cause, extend the one hundred twenty (120)-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 fourteen (14) days after the motion is filed.

Subdivision (a) 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 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 (7), thereby reducing the likelihood that time periods will end on a Saturday or Sunday.

This rule was amended in 2013 to include in the new paragraph (2) of subdivision (b) the provisions of General Order M-415, which relates to an individual debtor’s assumption of a lease of personal property under section 365(p) of the Bankruptcy Code. General Order M-415 was abrogated and replaced by this local rule in 2013.

Subdivision (c) was amended in 2013 so that the automatic extension of time would apply if the Court is unable to schedule a return date within fourteen (14) days after the motion is filed, provided that the return date is as soon thereafter as it may be scheduled by the Court. Subdivision (d) was amended in 2013 to update the Bankruptcy Code cross reference to reflect Bankruptcy Code amendments subsequent to this local rule’s promulgation.

- (a) Unless the Court orders otherwise, no party shall file a motion for summary judgment without first seeking a pre-motion conference. The request for a pre-motion conference shall be made by letter, filed with the Court, on the docket of the case, and served on all other parties setting forth the issues to be presented in the motion and the grounds for relief. Unless the Court otherwise directs, the letter shall not exceed two pages in length.
- (b) Upon any motion for summary judgment pursuant to Bankruptcy Rule 7056, there shall be annexed to the motion a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit the statement shall constitute grounds for denial of the motion.
- (c) Papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and if necessary, additional paragraphs containing a separate, short, and concise statement of additional material facts as to which it is contended that there is a genuine issue to be tried.
- (d) Each numbered paragraph in the statement of material facts required to be served by the moving party shall be deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.
- (e) Each statement by the movant or opponent pursuant to subdivisions (b) or (c) of this rule, including each statement controverting any statement of material fact by a movant or opponent, shall be followed by citation to evidence which would be admissible.

### **Comment**

Subdivision (a) of this rule was added in 2004 because motions for summary judgment are frequently burdensome, in time and expense, for the Court and the parties. Parties frequently file motions for summary judgment when an objective examination would reveal triable issues of fact or when the Court might conclude that it would be more cost-effective to resolve all issues at trial, given that most trials in bankruptcy court are bench trials. Subdivision (a) provides the Court with an 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).

This rule was amended in 2013 to impose a page limit on any letter requesting a pre-motion conference as a prerequisite for filing a motion for summary judgment. This limit will produce greater efficiency and will prevent parties from extensive briefing of issues in the letter requesting a pre-motion conference.

**Rule 9001-1                    DEFINITIONS – Amended [August 1, 2013]**

(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;

(15) “*Return Date*” means the date set for a hearing on a motion or application, and

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

(b) Rules of Construction.

- (1) 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.
- (2) Local Bankruptcy Rules containing references and URL links to guidelines, procedures, or forms on the Court’s website shall be construed to mean such guidelines, procedures, and forms as amended from time to time.

(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.

Subdivision (a) of this rule was amended in 2013 to add the definition of “return date.” This defined term was added to clarify that all references in the Local Bankruptcy Rules to return date mean the date set for a hearing on a motion or application, not the date on which objections or replies are due. Although an actual hearing may not be required in the absence of an objection or request for a hearing, the date set for a hearing in the event that a hearing is or becomes necessary is the “return date.” The return date is often used in the Local Rules as a reference point for determining certain deadlines. See Local Bankruptcy Rule 9006-1.

Subdivision (b) of this rule was amended in 2013 to add paragraph (2), which provides that a reference to URL links and guidelines in these Local Bankruptcy Rules is to be construed as a reference to such guidelines, procedures, and forms as they may be amended by the Court from time to time.

**Rule 9004-2                      CAPTION – Amended [August 1, 2013]**

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

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

**Comment**

Subdivision (a) of this rule is derived from Former Local Bankruptcy Rule 9. Subdivision (b) of this rule is derived from former Standing Order M-99. The return date for a motion is obtained pursuant to Local Bankruptcy Rule 5070-1.

This rule was amended in 2013 to require that all motions and related pleadings include the deadline for filing objections or other responsive papers in the caption. In addition, for all objections or other responsive papers, the CM/ECF docket number for the proceeding must be included in the caption.

**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, 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.

**Rule 9006-2                    AUTOMATIC EXTENSION OF TIME WHEN TIMELY MOTION  
TO EXTEND TIME IS FILED – New [August 1, 2013]**

Unless otherwise provided in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or order of the Court, when a motion to extend the time to take any action is filed before the

expiration of the period prescribed by the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules, or order of the Court, with a return date that is no later than fourteen (14) days after the date of such filing or, if the Court is unable to schedule a return date within such period, as soon thereafter as the return date may be scheduled by the Court, the time shall automatically be extended until the Court resolves the motion to extend the time. An automatic extension under this rule shall not require the issuance or entry of an order extending the time.

### **Comment**

This rule was added in 2013 as an exercise of the Court's discretion to extend time under Bankruptcy Rule 9006(b) and to obviate the need for a "bridge order" in certain circumstances.

This local rule does not apply if an automatic bridge order would be inconsistent with a provision of the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules, or order of the Court. For example, Local Bankruptcy Rule 9006-2 would not apply to motions to extend the time to file a plan or to confirm a plan in a small business case because, pursuant to section 1121(e)(3) of the Bankruptcy Code, such extensions require that the Court sign an extension order before the existing deadline expires. In addition, extensions of time for a lessee to assume or reject an unexpired lease of nonresidential real property are governed by Local Bankruptcy Rule 6006-1(c), which contains certain limitations, instead of Local Bankruptcy Rule 9006-2.

### **Rule 9011-1                    SIGNING OF PAPERS – Amended [August 1, 2013]**

(a) All pleadings, motions, and other papers that are submitted for filing, except a list, schedule, or statement, or amendments thereto, shall be signed by an attorney of record in the attorney's own name or, if there is no attorney, all papers submitted for filing shall be signed by the party. The name of the attorney or party shall be clearly printed or typed below the signature, together with the attorney's or party's address and telephone number.

(b) The signing of documents filed electronically shall be governed by the *Procedures for the Filing, Signing, and Verification of Documents by Electronic Means* issued by the Court, which shall be available on the Court's website (<http://www.nysb.uscourts.gov/sites/default/files/5005-2-procedures.pdf>). An original signed copy of the filing shall be maintained in the attorney's files.

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

### **Comment**

This rule is an adaptation of Civil Rule 11.1 of the Local District Rules. This rule was amended in 2004 to conform to Civil Rule 11.1(b) of the Local District Rules to

allow attorneys to use an identification number issued by the District Court instead of the last four digits of the attorney's social security number.

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

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

Subdivision (b) was also amended in 2008 to provide that signing electronically filed documents is governed by the Court's standing order on electronically filed cases. This rule was amended in 2013 to specify the title to the procedures promulgated by General Order M-399 relating to electronic filing, signing and verification of documents, and to state the link to the Court's website where practitioners may access them. It is anticipated that these procedures, which also may be obtained from the Clerk, will be amended from time to time to account for changes in technology or the law.

**Rule 9014-2                    FIRST SCHEDULED HEARING – Amended [August 1, 2013]**

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 sections 363(b), 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 section 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) Repealed.

**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).

Subdivision (f) of this rule was abrogated in 2013. Since this rule was adopted in 2004, there had been no general orders issued under subdivision (f), which could have made this paragraph misleading to practitioners. If the Court wants to specify another kind of contested matter in which an evidentiary hearing will be held at the first scheduled hearing, the Court may do so by amending this rule. Therefore, subdivision (f) is not necessary to give the Court flexibility to expand the list set forth in subdivisions (a) through (e).

**Rule 9019-1                    ALTERNATIVE DISPUTE RESOLUTION – Amended [August 1, 2013]**

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

**Comment**

Procedures governing mediation programs in bankruptcy cases and adversary proceedings were promulgated by General Order M-390. This rule was amended in 2013 to specify the title of the procedures promulgated by General Order M-390 amended by General Order M-452 and to state in the rule the link to the Court’s website where practitioners may access the governing procedures. The Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings, which also may be obtained from the Clerk, may be amended by the Court after giving notice and opportunity for comment as is appropriate.

**Rule 9019-2**                    **LOSS MITIGATION FOR INDIVIDUAL DEBTORS WITH RESIDENTIAL REAL PROPERTY AT RISK TO FORECLOSURE – New [August 1, 2013]**

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

**Comment**

This rule was promulgated in 2013 to include in the Local Bankruptcy Rules a reference to the Loss Mitigation Program Procedures established by General Order M-413 and modified by General Order M-451. These procedures, which also may be obtained from the Clerk, may be amended by the Court from time to time.

**Rule 9070-1**                    **COPIES OF FILED PAPERS – New [August 1, 2013]**

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

(b) *Chambers Copy.* Unless the Court directs otherwise, a copy of all complaints, answers, motions, applications, objections, and responses to any of the foregoing filed with the Court, other than proofs of claim, shall be marked “Chambers Copy” and delivered or mailed to the Clerk’s office located in the division in which the assigned Judge sits on the same day as the papers are filed with the Clerk or, if filed electronically, not later than the next day.

**Comment**

The rule is derived from Former Local Bankruptcy Rule 9(d) and (e). The next business day deadline in subdivision (b) of this rule was amended in 2009 to delete the reference to “business” so that the time period will be consistent with the 2009 amendments to Bankruptcy Rule 9006(a).

Subdivision (b) was amended in 2013 to reduce the amount of paper submitted as chambers copies. Unless the Court directs otherwise, only certain papers specified in the rule, rather than all papers, must be delivered to chambers under this rule. Subdivision (b) of this rule was also amended to permit the mailing of chambers copies to the Court and to eliminate the requirement that papers must be delivered in unsealed envelopes.

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

[August 1, 2013]

(a) *Submission or Settlement of Order, Judgment, or Decree.* Unless the Court orders otherwise, if, following a hearing or decision, the Court directs a party to submit or settle an order, judgment, or decree, the party, within 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 counterproposed order, judgment, or decree submitted or settled pursuant to this rule shall form a part of the record of the case, adversary proceeding, or contested matter.

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

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

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

(3) *Form.* A notice of presentment of a proposed order shall conform substantially to the appropriate form following this ruling.

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

(1) *Use.* Unless the Court orders otherwise, where 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 and

(J) 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.

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

[NOTE: Include the two forms in the current rule with the following modifications: (i) The following sentence will be added at the end of the second paragraph of both forms: "The ECF docket number to which the filing relates shall be included in the upper right hand corner of the caption of all objections."; and, (2) to the right of the caption of the "Notice of Presentment of \_\_\_\_\_ and Opportunity for Hearing," under "Presentment Date and Time," insert "Objection Deadline."]

### **Comment**

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

therein and where it is anticipated that the relief requested will be uncontested.

Subdivision (c)(1) of this rule was amended in 2008 to delete from the list of motions that may be made on presentment a motion to terminate the automatic stay pursuant to 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 (c)(1) of this rule 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 (d) was added in 2013 to clarify that the Court need not enter the order on the day of presentment. Other revisions were stylistic.

## **Rule 9075-2. CERTIFICATE OF NO OBJECTION – New [August 1, 2013]**

(a) *Filing a Certificate of No Objection.* If a motion or application has been filed and appropriate notice thereof has been served, and no objection, responsive pleading, or request for a hearing with respect to the motion or application has been filed or served before forty-eight (48) hours after the expiration of the time to file an objection, counsel for the moving party may file a certificate of no objection (“CNO”), with a copy to chambers, stating that no objection, responsive pleading, or request for a hearing has been filed or served on the moving party. The CNO shall include the date of the filing and

service of the motion or application, the deadline for filing an objection thereto, and a statement that counsel is filing the CNO not less than forty-eight (48) hours after the expiration of such deadline.

(b) *Representations to the Court.* By filing the CNO, counsel for the moving party represents to the Court that the moving party is unaware of any objection, responsive pleading, or request for a hearing with respect to the motion or application, that counsel has reviewed the Court's docket not less than forty-eight (48) hours after expiration of the time to file an objection, and that no objection, responsive pleading, or request for a hearing with respect to the motion or application appears thereon.

(c) *Entry of Order and Cancellation of Scheduled Hearing.* Unless an individual debtor not represented by an attorney is a party in the proceeding, or a hearing is required under the Bankruptcy Code or Bankruptcy Rules notwithstanding the absence of an objection, responsive pleading, or request for a hearing, upon receipt of the CNO, the Court may enter the order accompanying the motion or application without further pleading or hearing and, once the order is entered, the hearing scheduled on the motion or application shall be cancelled without further notice.

### **Comment**

This rule was added in 2013 to provide a procedure for counsel to inform the Court that no timely objection, responsive pleading, or request for a hearing has been filed or served and to request that the Court enter the proposed order without a hearing. It applies only in situations where appropriate notice of a motion has been given in accordance with the Bankruptcy Rules, Local Bankruptcy Rules, or order of the Court. This procedure is not available if the Court is required to hold a hearing notwithstanding the absence of an objection, responsive pleading, or request for a hearing, such as a hearing on confirmation of a plan in a chapter 11 or chapter 13 case or a hearing on reaffirmation of a debt requested by an individual debtor not represented by counsel.