

**LOCAL BANKRUPTCY RULES
FOR THE
EASTERN DISTRICT OF NEW YORK**



Honorable Carla E. Craig, Chief Judge

Honorable Jerome Feller
Honorable Dorothy T. Eisenberg
Honorable Dennis E. Milton
Honorable Elizabeth S. Stong
Honorable Alan S. Trust
Honorable Robert E. Grossman

Robert A. Gavin, Jr., Clerk of Court

Effective
~~May 28, 2008~~
December 1, 2009

**LOCAL BANKRUPTCY RULES
FOR THE
EASTERN DISTRICT OF NEW YORK**

Rule 1001-1 SHORT TITLE; APPLICABILITY

(a) *Short Title.*

These rules shall be known as the “E.D.N.Y. Local Bankruptcy Rules.”

(b) *Applicability.*

(i) The E.D.N.Y. Local Bankruptcy Rules, as amended as of ~~May 28, 2008, shall supersede the Former Local Bankruptcy Rules and~~December 1, 2009, shall apply to all cases and proceedings in this Court.

(ii) The appropriate citation form for an E.D.N.Y. Local Bankruptcy Rule is “E.D.N.Y. LBR _____.” For example, this rule shall be cited as “E.D.N.Y. LBR 1001-1.”

(c) *Modification or Suspension.*

In the interest of justice or for cause, the Court may modify or suspend the requirements set forth in these rules.

REFERENCE: Individual chambers rules of Judges, when applicable.

**PART I COMMENCEMENT OF CASE;
PROCEEDINGS RELATING TO PETITION
AND ORDER FOR RELIEF**

Rule 1002-1 FILING OF PETITION

(a) *Petition.*

(i) A petition commencing a case under any chapter of the Bankruptcy Code in which the debtor’s address is located in Kings, Richmond, or Queens County shall be filed in the office of the Clerk in the Brooklyn courthouse or designated as a Brooklyn case if filed electronically.

- (ii) A petition commencing a case under any chapter of the Bankruptcy Code in which the debtor's address is located in Nassau or Suffolk County shall be filed in the office of the Clerk in the Central Islip courthouse or designated as a Central Islip case if filed electronically.

(b) *Electronic Filing.*

Notwithstanding subdivision (a) of this rule, a petition commencing a case under any chapter of the Bankruptcy Code shall be filed by electronic means in the manner specified by the General Order on Electronic Filing Procedures and these rules.

(c) *Incomplete Filing.*

In the event that a petition is submitted without full compliance with all requirements, the Clerk shall accept the same for filing and shall provide the debtor, debtor's counsel and the trustee, if any, with a notice of the deficiencies.

CROSS-REFERENCE: E.D.N.Y. LBR 1073-1, 9011-1
REFERENCES: Bankruptcy Code § 521; Court's Website; General Order on Electronic Filing Procedures

Rule 1005-1 DEBTOR'S ADDRESS IN PETITION

If the debtor's post office address is not the debtor's residence or place of business, the petition shall also state the debtor's residence or place of business, including the street number, street, apartment or suite number, and zip code.

Rule 1005-2 AMENDING CAPTION TO CORRECT DEBTOR'S NAME

If the debtor's name is incorrect in the caption of the petition, the debtor shall file an application and proposed order amending the caption to correct the debtor's name.

REFERENCE: Court's Website
Committee Note: A form of order is located at the intake counter of the Clerk's Office and at the Court's Website.

Rule 1007-1 LIST OF CREDITORS

(a) *Creditor List.*

In addition to the schedules, a list shall be filed which sets forth the names of all creditors in alphabetical order (the "Creditor List"). The Creditor List shall also set forth the post office address, zip code, and the specific amount of debt, if known, owed to each listed creditor. The provider of the Creditor List shall certify that it is accurate.

(b) *Schedules and Lists Filed After Filing of Petition.*

Schedules D, E, and F which were not submitted at the time of filing of the petition but are filed thereafter shall be accompanied by (i) Local Form No. USBC-64 entitled “Affidavit Pursuant to Local Rule 1007-1(b)” and (ii) the applicable filing fee.

CROSS-REFERENCE: E.D.N.Y. LBR 1009-1
REFERENCE: Court’s Website
Committee Note: Local Form No. USBC-64 is available at the intake counter of the Clerk’s office and at the Court’s Website.

Rule 1007-2 EXEMPTIONS AND WAIVERS REGARDING CREDIT COUNSELING REQUIREMENT; WAIVER OF PERSONAL FINANCIAL MANAGEMENT COURSE

(a) A motion pursuant to Bankruptcy Code § 109(h)(3)(B) for a further exemption from the credit counseling requirement imposed by Bankruptcy Code § 109(h)(1) shall be made on notice to the trustee and the United States trustee, and shall explain the circumstances which warrant the relief requested.

(b) A motion pursuant to Bankruptcy Code § 109(h)(4) for a waiver of the credit counseling requirement imposed by Bankruptcy Code § 109(h)(1) or a waiver of the requirement to file a statement regarding completion of an instructional course concerning personal financial management imposed by Bankruptcy Code § 727(a)(11) shall be on notice to the trustee and the United States trustee and should be supported by documentary evidence of the debtor’s entitlement to the relief requested.

REFERENCES: Bankruptcy Code §§ 109(h)(1), (3) and (4), 727(a)(11)

Rule 1007-3 MAILING MATRIX

(a) *General Requirements.*

~~(i) — At the time of filing a voluntary petition or within 15 days following the entry of an order for relief on an involuntary petition, the~~(i) The debtor shall file a mailing matrix which shall include, in alphabetical order, the name and last known mailing address (including zip codes) for every scheduled creditor. The mailing matrix shall also include those agencies and officers of the United States entitled to receive notice under Bankruptcy Rule 2002(j). The mailing matrix shall be filed at the time the list of creditors required by Bankruptcy Rule 1007(a) is filed.

(ii) If the debtor is a partnership, the mailing matrix shall contain the names and current mailing addresses of each general and limited partner.

- (iii) If the debtor is a corporation, the mailing matrix shall contain: (1) the names and current mailing addresses of the present officers and directors and the position held by each, or if none, the immediate past officers and past directors; and (2) the name and address of any person who may be served pursuant to Bankruptcy Rule 7004(b)(3). In addition, the debtor shall file with its list of equity security holders a separate mailing matrix containing the name and last known address or place of business of each equity security holder.

(b) *Accuracy of Information Provided and Amendment of Mailing Matrix.*

The debtor and debtor's attorney are responsible for the preparation of the mailing matrix and any amendments thereto. Upon the need for any amendment to a mailing matrix, the debtor shall file an amended creditor mailing matrix together with a list of all creditors who were added or deleted. The debtor shall file Local Form No. USBC-44 entitled "Verification of Mailing Matrix/List of Creditors."

REFERENCES: Court's Website; General Order on Electronic Filing Procedures
Committee Note: Specifications for preparation of the mailing matrix are available at the intake counter of the Clerk's office and at the Court's Website. Local Form No. USBC-44 is available at the intake counter of the Clerk's office and at the Court's Website.

**Rule 1007-4 DEBTOR'S AFFIDAVIT TO BE FILED IN
CHAPTER 11 CASES**

(a) *Contents of Affidavit.*

In addition to the requirements set forth in Bankruptcy Rule 1007, a debtor in a chapter 11 case shall file an affidavit setting forth:

- (i) whether the debtor is a small business debtor within the meaning of Bankruptcy Code § 101(51D);
- (ii) the nature of the debtor's business and a statement of the circumstances leading to the debtor's filing under chapter 11;
- (iii) in a case originally commenced under chapter 7, 12 or 13, the name and address of any trustee appointed in the case and, in a case originally commenced under chapter 7, the names and addresses of the members of any creditors' committee elected under Bankruptcy Code § 705;

- (iv) the names and addresses of the members of, and professionals employed by, any committee organized prior to the order for relief in the chapter 11 case, and a description of the circumstances surrounding the formation of the committee and the date of its formation;
- (v) with respect to each of the holders of the 20 largest general unsecured claims, excluding insiders: name, address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), telephone number, name(s) of person(s) familiar with the debtor's account, amount of the claim, and whether the claim is contingent, unliquidated, disputed, or partially secured;
- (vi) with respect to each of the holders of the 5 largest secured claims: name, address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), amount of the claim, a description and an estimate of the value of the collateral securing the claim, and whether the claim or lien is disputed;
- (vii) a summary of the debtor's assets and liabilities;
- (viii) the number and classes of shares of stock, debentures, or other securities of the debtor that are publicly held, and the number of record holders thereof, listing separately those held by each of the debtor's officers and directors and the amounts so held;
- (ix) a list of all of the debtor's property in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents, or secured creditor, or agent for any such entity, giving the name, address, and telephone number of each such entity, the title of any proceeding relating thereto, and the court in which it is pending;
- (x) a list of the premises owned, leased, or held under any other arrangement from which the debtor operates its business;
- (xi) the location of the debtor's significant assets, the location of its books and records, and the nature, location, and value of any assets held by the debtor outside the territorial limits of the United States;

- (xii) the nature and present status of each action or proceeding, pending or threatened, against the debtor or its property where a judgment against the debtor or a seizure of its property may be imminent;
 - (xiii) the names of the debtor's existing senior management, their tenure with the debtor, and a summary of their relevant responsibilities and experience;
 - (xiv) the estimated amount of the weekly payroll to employees (exclusive of officers, directors, stockholders, partners and members) for the 30-day period following the filing of the chapter 11 petition;
 - (xv) the amount paid and proposed to be paid for services for the 30-day period following the filing of the chapter 11 petition --
 - (A) if the debtor is a corporation, to officers and directors;
 - (B) if the debtor is an individual or a partnership, to the individual or the members of the partnership; and
 - (C) if a financial or business consultant has been retained by the debtor, to the consultant;
 - (xvi) a schedule, for the 30-day period following the filing of the chapter 11 petition, of estimated cash receipts and disbursements, net cash gain or loss, obligations and receivables expected to accrue but remaining unpaid, other than professional fees, and any other information relevant to an understanding of the foregoing; and
 - (xvii) such additional information as may be necessary to fully inform the Court of the debtor's rehabilitation prospects.
- (b) *When to File.*

In a chapter 11 case, upon the entry of an order for relief, the affidavit shall be filed forthwith, but no later than ~~15~~14 days after the date on which the order for relief is entered.

(c) *Waiver of Requirements.*

Upon motion of the debtor on notice to the United States trustee showing that it is impracticable or impossible to furnish any of the foregoing information, the Court may waive any of the foregoing provisions, with the exception of those contained in paragraphs (i) through (vii) of subdivision (a) of this rule.

REFERENCES: Bankruptcy Code §§ 101(51D), 705

Rule 1009-1 **AMENDMENTS OF VOLUNTARY PETITIONS, LISTS,
SCHEDULES AND STATEMENTS**

(a) *Effectuation of Amendment.*

An order is not required to file an amended voluntary petition, list, schedule, or statement by the debtor. Amendments to Schedules D, E, or F shall be accompanied by (i) Local Form No. USBC-63 entitled “Affidavit Pursuant to Local Rule 1009-1(a)” and (ii) the applicable filing fee. An amendment shall not be effective until proof of service in accordance with subdivision (b) of this rule has been filed. If a creditor is added or deleted, an amended mailing matrix shall also be filed.

(b) *Notice of Amendment.*

A complete copy of the voluntary petition, list, schedule, or statement, as amended, together with Local Form No. USBC-63, shall be served by the amending party upon:

- (i) the United States trustee;
- (ii) the trustee;
- (iii) all creditors who were added or deleted; and
- (iv) any other party affected thereby.

If the amendment affects claimed exemptions, the amending party must also serve all creditors. If the amendment adds a creditor, the papers to be served on such creditor shall consist of the amendment, together with copies of all notices previously sent to creditors that appear in the Court’s docket, including without limitation the notice informing creditors of the date by which all proofs of claim must be filed. If the amendment modifies an existing creditor’s claim, service on such creditor shall include any notices informing creditors of the date by which proofs of claim must be filed.

~~(c) — Number of Copies.~~

~~(i) — Filing in connection with Non-electronic Cases: whenever amendments are made to a debtor's voluntary petition, lists, schedules, or statements, the amending party shall file with the Clerk:~~

~~(A) — in a chapter 7, 12, or 13 case, an original and 3 copies of the document as amended; or~~

~~(B) — in a chapter 11 case, an original and 6 copies of the document as amended.~~

~~(ii) — Filing in connection with ECF cases: copies of the voluntary petition, lists, schedules or documents, as amended, are not required.~~

CROSS-REFERENCES: E.D.N.Y. LBR 3007-~~32~~, 4003-1, 9004-1
REFERENCES: Court's Website; General Order on Electronic Filing Procedures
Committee Note: Local Form No. USBC-63 is available at the intake counter of the Clerk's office and at the Court's Website.

Rule 1013-1 INVOLUNTARY PETITIONS

(a) *Entry of Order for Relief upon Default of Alleged Debtor.*

An order for relief shall be entered if proof of service of the summons and involuntary petition has been filed and the alleged debtor has not timely responded.

(b) *Notice of Entry.*

Upon entry of an order for relief in an involuntary case, the Clerk shall forthwith serve a copy of the order with notice of entry upon the petitioners, the debtor, the debtor's attorney of record, if any, and the United States trustee.

(c) *Dismissal.*

The Court may dismiss the case if proof of service of the summons and involuntary petition pursuant to Bankruptcy Rule 7004 is not timely filed.

REFERENCE: Bankruptcy Rule 7004

Rule 1017-1 DISMISSAL OF CASE AFTER CONVERSION

If a case has been converted from chapter 11 to chapter 7, and the trustee is seeking to dismiss the case for failure of the debtor to attend the meeting of creditors under Bankruptcy Code § 341, the trustee must file an affidavit setting forth what efforts, if any, have been made to locate and serve the debtor.

Rule 1073-1 ASSIGNMENT OF CASES AND PROCEEDINGS

(a) Assignment of Cases.

The Clerk shall randomly assign cases to the Judges. Notwithstanding the foregoing, the Court may adopt internal procedures whereby cases are assigned to Judges sitting in Brooklyn or Central Islip depending upon the location of the debtor’s address.

(b) *Petitions of Affiliates or Related Cases.*

Notwithstanding subdivision (a) of this rule, cases involving affiliated or related debtors shall be assigned to the Judge to whom the first such case was assigned, and any case subsequently filed by a debtor who has previously filed a petition shall be assigned to the Judge to whom the last such case was assigned.

(c) *Assignments and Reassignments.*

Notwithstanding the provisions of this rule, the Chief Judge may, in the interests of justice or the proper administration of the Court, assign or re-assign cases or proceedings.

CROSS-REFERENCE: E.D.N.Y. LBR 1002-1

Rule 1073-2 DISCLOSURE OF RELATED CASES

(a) *Definition of Related Cases.*

Cases shall be deemed “Related Cases” for purposes of this rule and E.D.N.Y. LBR 1073-1 if the earlier case was pending at any time within 8 years before the filing of the current petition, and the debtors in such cases:

- (i) are the same;
- (ii) are spouses or ex-spouses;
- (iii) are affiliates, as defined in Bankruptcy Code § 101(2);
- (iv) are general partners in the same partnership;

- (v) are a partnership and one or more of its general partners;
 - (vi) are partnerships which share one or more common general partners; or
 - (vii) have, or within 180 days of the commencement of either of the Related Cases had, an interest in property that was or is included in the property of the other debtor's estate under Bankruptcy Code § 541(a).
- (b) *Disclosure of Related Cases.*
- (i) A petition commencing a case shall be accompanied by Local Form No. USBC-2 entitled "E.D.N.Y. LBR 1073-2 Statement."
 - (ii) The E.D.N.Y. LBR 1073-2 Statement shall be executed by the debtor or any other petitioner under penalty of perjury and shall disclose, to the petitioner's best knowledge, information, and belief:
 - (A) whether any Related Case is pending or has been pending at any time;
 - (B) the name of the debtor in such Related Case;
 - (C) the case number of such Related Case;
 - (D) the district and division in which such Related Case is or was pending;
 - (E) the Judge to whom such Related Case was assigned;
 - (F) the current status of such Related Case;
 - (G) the manner in which the cases are related; and
 - (H) any real property listed in a debtor's Schedule A which was also listed in a Schedule A filed in a Related case.

(c) *Sanctions.*

The failure to fully and truthfully provide all information required by the E.D.N.Y. LBR 1073-2 Statement may subject the debtor or any other petitioner and their

attorney to appropriate sanctions, including without limitation, conversion, the appointment of a trustee, or the dismissal of the case with prejudice.

CROSS-REFERENCE: E.D.N.Y. LBR 1073-1
REFERENCES: Bankruptcy Code §§ 101(2), 541(a); Court's Website
Committee Note: Local Form No. USBC-2 is available at the Court's Website and at the intake counter of the Clerk's office.

Rule 1073-3 CORPORATE DISCLOSURE

(a) *Who Must File.*

Any corporation that is a debtor shall file a statement that identifies any corporation that directly or indirectly owns 10% or more of any class of the debtor's equity interests, or states that there are no entities to report under this subdivision (the "E.D.N.Y. LBR 1073-3 Statement").

(b) *Time for Filing.*

- (i) In a voluntary case, the debtor shall file the E.D.N.Y. LBR 1073-3 Statement with the petition.
- (ii) In an involuntary case, the debtor shall file the E.D.N.Y. LBR 1073-3 Statement within ~~15~~14 days after the entry of the order for relief.
- (iii) Upon any change in the information required under this rule, the debtor shall promptly file an amended E.D.N.Y. LBR 1073-3 Statement.

REFERENCE: Bankruptcy Rule 7007.1; Federal Rule of Civil Procedure 7.1

**Rule 1074-1 CORPORATE RESOLUTION;
PARTNERSHIP STATEMENT**

(a) *Corporate Resolution.*

A voluntary petition or consent to an involuntary petition filed by a corporation shall be accompanied by a duly attested copy of the corporate resolution authorizing, or other appropriate authorization for, the filing.

(b) *Partnership or Limited Liability Partnership Statements.*

A voluntary petition filed by, or consent to an involuntary petition filed on behalf of, a partnership or limited liability partnership shall be accompanied by a duly attested statement that all partners whose consent is required for the filing have consented.

(c) *Limited Liability Company Statements.*

A voluntary petition filed by, or consent to an involuntary petition filed on behalf of a limited liability company shall be accompanied by a duly attested statement by the managing member, or by at least one member if there is no managing member, that the filing is duly authorized.

**PART II OFFICERS AND ADMINISTRATION; NOTICES;
MEETINGS; EXAMINATIONS; ELECTIONS;
ATTORNEYS AND ACCOUNTANTS**

Rule 2002-1 NOTICES OF PRESENTMENT

(a) *Contents of Notice of Presentment.*

Whenever “notice and a hearing” (as defined in Bankruptcy Code § 102(1)) are specified in the Bankruptcy Code or Bankruptcy Rules but a hearing is not mandatory, the entity proposing to act or obtain an order, in lieu of proceeding by notice of hearing, may proceed by filing a motion or application with the Clerk, together with proof of service and a notice of presentment. The notice of presentment shall set forth:

- (i) the date by which objections or responses to the proposed action or order shall be served and filed;
- (ii) the date and time when the action will be taken or the proposed order will be presented for signature if there is no objection, and a statement that the action will be taken or the order may be entered without a hearing unless a timely objection is made; and
- (iii) the date on which a hearing will be held if a timely objection is made.

(b) *Proposed Order.*

A copy of the proposed order shall be filed and served along with the notice of presentment.

(c) *Time for Notice.*

A notice of presentment under subdivision (a) of this rule shall provide at least ~~20~~ 21 days’ notice of the date set for the proposed action or the presentment of the proposed order. If papers are served by first-class mail, an additional 3 days shall be added to the

minimum service requirement. If papers are served by overnight mail or courier, an additional day shall be added to the minimum service requirement.

(d) *Entities to Receive Notice.*

In addition to the requirements of Bankruptcy Rule 2002 and E.D.N.Y. LBR 2002-2, a notice of presentment under subdivision (a) of this rule shall be served upon any entity having or claiming an interest in the subject matter of the proposed action or order or who otherwise would be affected by the proposed action or order.

(e) *Objection.*

Any objection to the proposed action or order shall be in writing, set forth the nature of the objector's interest in the estate, state the reasons and legal basis for the objection, and be served on the proponent and filed at least ~~3 Business Days~~ 7 days prior to the date set for the proposed action or the presentment of the proposed order. The objection and proof of service shall be filed and a courtesy copy shall be provided to chambers.

CROSS-REFERENCES: E.D.N.Y. LBR 2002-2, 3015-2, 4001-1, 5070-1
Committee Note: Each Judge's chambers should also be consulted regarding the relief that may be sought by notice of presentment.

Rule 2002-2 NOTICE TO GOVERNMENTAL AGENCIES

(a) *United States Trustee.*

Unless the case is a chapter 9 case or the United States trustee requests otherwise, any notice required to be given to creditors also shall be given to the United States trustee. Notices to the United States trustee shall be sent to the address specified at the Court's Website.

(b) *Internal Revenue Service.*

Except as otherwise requested by it, any notices required to be given to the Internal Revenue Service shall also be given to the United States Attorney for the Eastern District of New York and the Tax Division of the U.S. Department of Justice. Notices to these entities shall be sent to the addresses specified at the Court's Website.

(c) *New York State Department of Taxation and Finance.*

Except as otherwise requested by it, any notices required to be given to the New York State Department of Taxation and Finance shall also be given to the New York State Attorney General. Notices to these entities shall be sent to the addresses specified at the Court's Website.

REFERENCE: Court's Website
Committee Note: The addresses referred to in this local rule are available at the intake counter of the Clerk's office and at the Court's Website.

Rule 2003-1 MANDATORY DISCLOSURES IN CHAPTER 13 CASES

(a) In all chapter 13 cases, the debtor shall provide the following documents to the trustee no later than 7 ~~Business Days~~ days before the first date set for the meeting of creditors pursuant to Bankruptcy Code § 341(a):

- (i) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor, or a written statement that such proof of income does not exist;
- (ii) copies of affidavits of contribution and copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by each person contributing to the proposed plan or to payment of expenses of the debtor's household;
- (iii) except in cases where the debtor proposes to pay 100% to unsecured creditors, documentation (other than tax assessments) of the current value of all real property, condominiums, cooperative apartments, vacant land, cemetery plots and/or timeshares in which the debtor has an ownership interest. If a valuation is prepared by a real estate broker, then the broker shall (A) have personally inspected the premises, (B) maintain an office in the vicinity of the premises, and (C) provide information on 4 recent comparable sales. All valuations must be less than 90 days old prior to filing;
- (iv) copies of leases for all real property for which the debtor is lessor;
- (v) in a case where the debtor had a prior chapter 13 case pending within a year of the filing date, a copy of a detailed affidavit of

changed circumstances, describing the disposition of each prior case and explaining how the debtor's circumstances have changed; and

- (vi) copies of canceled checks, receipts, money orders, or other documentation of payment of all mortgage installments, real property lease payments, auto loan payments, and co-op or condo maintenance and management fees that have come due since the petition was filed.

(b) A debtor shall provide the following documents to the trustee no later than 7 days before the first date set for confirmation of the chapter 13 plan:

- (i) copies of canceled checks, receipts, money orders or other documentation of payment of all mortgage installments and real property lease payments that have come due since the disclosure was made under subdivision (a)(vi) of this rule;
- (ii) a copy of an affidavit by the debtor stating:
 - (A) whether the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first became payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order or by statute to pay such domestic support obligation; or
 - (B) that the debtor has no domestic support obligations; and
- (iii) a copy of an affidavit by the debtor stating whether the debtor has filed all applicable federal, state, and local tax returns as required by Bankruptcy Code § 1308.

(c) A debtor shall file the original affidavits required under subdivisions (a)(ii) and (v), and (b)(ii) and (iii) of this rule.

(d) A debtor shall promptly provide to the trustee any other documents within the scope of Bankruptcy Rule 2004(b) that the trustee may request from time to time.

CROSS-REFERENCE: E.D.N.Y. LBR 4002-1

REFERENCES: Bankruptcy Code §§ 1308, 1325(a)(8), (9); Bankruptcy Rule 2004(b)

~~Committee Note: Subdivision (a)(1) of former E.D.N.Y. LBR 2003-1 was abrogated because it was inconsistent with Bankruptcy Code § 521(e)(2)(A)(i).~~

Rule 2014-1 EMPLOYMENT OF PROFESSIONAL PERSONS

(a) In addition to the requirements set forth in Bankruptcy Rule 2014(a), an application for the employment of a professional person pursuant to Bankruptcy Code §§ 327, 1103 or 1114 shall state:

- (i) the terms and conditions of the employment, including the terms of any retainer, hourly fee, or contingent fee arrangement;
- (ii) all compensation already paid or promised to the professional person in contemplation of or in connection with the services to be performed, and the specific source of such compensation; and
- (iii) whether the professional person has previously rendered any professional services to the trustee, debtor, debtor in possession, the extent thereof and the status of the compensation therefor.

(b) In addition to the requirements set forth in Bankruptcy Rule 2014(a), the application referred to in subdivision (a) shall be accompanied by a verified statement of the person to be employed stating that such person does not hold or represent an interest adverse to the estate except as specifically disclosed therein, and where employment is sought pursuant to Bankruptcy Code § 327(a), that the professional is disinterested.

(c) In addition to the requirements set forth in subdivisions (a) and (b), and Bankruptcy Rule 2014(a), an application seeking authorization to employ an accountant shall include a verified statement by an authorized representative of the accounting firm that sets forth:

- (i) whether or not the accountant is a certified public accountant; and
- (ii) the estimated cost of the accountant's proposed services, the basis of such estimate and the extent to which the

accountant is familiar with the books or accounts of the debtor.

(d) All *ex parte* proposed orders and supporting documentation for employment of any professional must be submitted to the United States trustee for review prior to filing.

CROSS-REFERENCE: E.D.N.Y. LBR 6005-1

REFERENCES: Bankruptcy Code §§ [101\(14\)](#), 327, 1103

**Rule 2015-1 MONTHLY REPORTS IN ALL CHAPTER 11, 12
AND BUSINESS CHAPTER 13 CASES**

The debtor in possession or trustee in all chapter 11 and 12 cases, or a chapter 13 debtor engaged in business within the meaning of Bankruptcy Code § 1304(a), shall file and serve upon the United States trustee and counsel for the creditors' committee (if any) in a chapter 11 or 12 case, or the trustee in a chapter 13 case, and provide to chambers, a verified monthly report no later than the 20th day of each month, which shall be completed in the manner prescribed by the United States trustee Guidelines, and in the case of a small business chapter 11 debtor, in accordance with Bankruptcy Code § 308 when such provisions shall become effective. Failure to file required reports may constitute cause for dismissal or conversion of the case.

REFERENCES: Bankruptcy Code §§ 308, 1304(a)

Rule 2016-1 COMPENSATION OF PROFESSIONALS

A person seeking an award of compensation or reimbursement of expenses shall comply with the requirements contained in any fee guidelines promulgated by the United States trustee. A copy of the order authorizing the retention of the professional shall accompany all such applications.

**Rule 2016-2 FINAL COMPENSATION OR REIMBURSEMENT
OF EXPENSES IN CHAPTER 7 CASES**

A person seeking a final award of compensation or reimbursement of expenses in a chapter 7 case shall file and serve an application on the trustee and the United States trustee no later than ~~2021~~ [7](#) days prior to the date of the hearing on the trustee's final account. Failure to file and serve an application within the time prescribed by this rule may result in its disallowance. Objections, if any, to such application shall be filed at least ~~5 Business Days~~ [7 days](#) prior to the date of the hearing.

Rule 2017-1**DESCRIPTION OF PRE-PETITION SERVICES OF
DEBTOR'S COUNSEL IN CHAPTER 7 OR 13 CASES**

Upon the filing of a chapter 7 or 13 case, the attorney for the debtor shall submit a statement, together with and in addition to the statement required by Bankruptcy Rule 2016(b), containing:

- (i) a description of pre-petition services performed for and on behalf of the debtor in contemplation of the petition;
- (ii) an itemization of the services performed by each member, associate, or paraprofessional of the firm;
- (iii) the time spent in the performance thereof, including the dates upon which the services were rendered and the time spent on each date;
- (iv) an itemization of expenses incurred by the debtor's attorney; and
- (v) the firm's billing rates for comparable services for each member, associate or paraprofessional.

REFERENCE: Bankruptcy Rule 2016(b)

Rule 2090-1**PRACTICE BEFORE THE COURT; WITHDRAWAL AS
ATTORNEY OF RECORD; SUSPENSION**

(a) *General.*

An attorney who may practice in the District Court pursuant to District Rule 1.3 may practice in this Court.

(b) *Pro Hac Vice.*

Upon motion made in accordance with District Rule 1.3(c), a member in good standing of the bar of any state or of any United States District Court may be permitted to practice in this Court in a particular case, adversary proceeding, or contested matter.

A member in good standing of the bar of any state or of any United States District Court whose involvement in the case is limited to filing a notice of appearance under Bankruptcy Rule 2002, filing a proof of claim or interest, or representing a child support creditor, may appear for those purposes without obtaining authorization to appear *pro hac vice*.

(c) *Pro Se.*

An individual may appear *pro se*. Such an individual shall include his or her residence or place of business address and telephone number on every paper filed with the court.

(d) *Withdrawal or Substitution of Attorneys of Record.*

An attorney who has been authorized to be retained or has appeared as the attorney of record for any party in any case or adversary proceeding may not withdraw or be relieved or displaced except by order after notice to the party represented, any adversaries (if applicable), the United States trustee and the trustee. An application for such an order shall include a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including the status of any pending matters.

(e) *Suspension.*

- (i) Any attorney admitted to practice before this Court may, for good cause shown, after notice and a hearing, be suspended from practice before the Court for an indefinite period, pending the outcome of disciplinary proceedings in the District Court.
- (ii) Grounds for suspension include conviction in another court of a serious crime; disbarment, suspension or reprimand by another court, with or without the attorney's consent; or resignation from the bar of another court while an investigation into allegations of misconduct is pending.
- (iii) In all pending cases in which a suspended attorney has made an appearance, the Clerk shall issue notice of the suspension to any party affected thereby.
- (iv) The Court may order a suspended attorney to return any fees received in cases currently before the Court, pending the outcome of disciplinary proceedings in the District Court.

REFERENCES: District Rules 1.3, 1.4 and 1.5; Bankruptcy Rule 9014; Court's Website

Committee Note: Forms to request authorization to appear *pro hac vice*, and a proposed order are available at the intake counter of the Clerk's office and at the Court's Website.

Rule 2090-2

APPEARANCE BY DEBTOR'S COUNSEL IN ADVERSARY PROCEEDINGS, CONTESTED MATTERS, ETC.

(a) *In General.*

The attorney of record for a debtor, or an attorney acting of counsel to such attorney and who is knowledgeable in all aspects of the case, shall appear on behalf of the debtor in every aspect of the case, including but not limited to appearing at the Bankruptcy Code § 341 meeting and any adjournments thereof, and defending an adversary proceeding, contested matter, motion, or application filed against the debtor during the pendency of the bankruptcy case. Except as provided in subdivisions (b) and (c) of this rule, an attorney of record for a debtor shall not exclude from the attorney's representation of the debtor any aspect of the case, including but not limited to, appearing at the Bankruptcy Code § 341 meeting and any adjournment thereof, and defending an adversary proceeding, contested matter, motion, or application filed against the debtor during the pendency of the bankruptcy case.

(b) *Exclusion of Adversary Proceeding Defense from Scope of Representation.*

If the debtor's pre-petition written retainer agreement with the attorney of record excludes the defense of an adversary proceeding from the agreed scope of representation, and if the attorney will not for that reason appear on the debtor's behalf in the adversary proceeding, and unless the debtor has obtained new counsel for the defense of such adversary proceeding and that counsel has appeared in the adversary proceeding, the attorney shall, within ~~15~~¹⁴ days of service of the summons and complaint, file and serve on the debtor and counsel for the plaintiff a signed copy of the relevant portions of the retainer agreement (which may be redacted, subject to further disclosure upon direction by the Court, to the extent required to protect privileged or proprietary information, but which must include the signature page) and an affirmation setting forth:

- (i) that such attorney has not been retained to represent the debtor in the adversary proceeding and for that reason will not undertake the representation;
- (ii) the applicable provisions of the attorney's written retainer agreement with the debtor;
- (iii) that such attorney, following the commencement of the adversary proceeding, has advised the debtor of:
 - (A) the nature of the adversary proceeding and the claims asserted therein;
 - (B) the debtor's obligation to file and serve an appropriate response to the initial pleading

and the consequences of failing timely to answer or move with respect to the pleading;

- (C) the requirements of form and time limits applicable to the preparation, filing and service of a responsive pleading; and
- (D) how to serve and file a responsive pleading;

and

- (iv) if the attorney is, despite best efforts, unable to contact the debtor to communicate the information described in subdivision (b)(iii) of this rule, the affirmation shall also set forth the nature of the attorney's efforts to contact the debtor.
- (c) *Relief from Representation of Chapter 11 or Chapter 13 Debtor Upon Conversion to Chapter 7*

Notwithstanding the requirements of subdivision (a) of this rule, upon conversion of a chapter 11 or chapter 13 case to a case under chapter 7, counsel for the debtor or chapter 11 trustee, if one was appointed, is relieved from any further obligation to represent the debtor or the chapter 11 trustee in the bankruptcy case, except that such counsel shall assist the debtor or chapter 11 trustee in the performance of their duties upon conversion under any applicable statute or rule.

- (d) *Relief from Representation of the Debtor Under Other Circumstances.*

Applications for relief from representation of a debtor under circumstances other than those described in subdivision (b) of this rule shall be made pursuant to E.D.N.Y. LBR 2090-1. The filing of a withdrawal application pursuant to E.D.N.Y. LBR 2090-1 does not suspend the requirements of subdivision (a) of this rule or toll the running of the time limitations applicable to the interposition of responses to papers initiating adversary proceedings, contested matters, motions, or any other application against the debtor.

- (e) *Sanctions.*

An attorney of record for a debtor who fails or refuses without reasonable excuse to represent the debtor in any aspect of the case, including but not limited to appearing at the Bankruptcy Code § 341 meeting and any adjournments thereof, and defending an adversary proceeding, contested matter, motion, or application filed against the debtor during the pendency of the bankruptcy case (other than any attorney who excludes the defense of adversary proceedings from the attorney's representation of the debtor in accordance with subdivision (b) of this rule and who complies with all of the requirements of subdivision (b) of this rule) may, after notice and a hearing, be

sanctioned pursuant to this rule and may be ordered to disgorge fees paid in connection with the case pursuant to Bankruptcy Rule 2017.

CROSS-REFERENCE: E.D.N.Y. LBR 2090-1
REFERENCE: Bankruptcy Rule 2017

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

Rule 3007-1 OBJECTIONS TO CLAIMS

A motion to reduce, expunge, or reclassify a claim shall have attached thereto a copy of the proof of claim as filed (without exhibits) which identifies the claimant by name and the claim number. Each reference to a filed claim in the moving papers and any proposed order to be entered thereon shall refer to the claim both by name of the claimant and claim number. The title of the motion shall refer to the claim by claim number.

Committee Note: Each Judge's chambers should be consulted regarding procedures for filing omnibus objections to claims.

Rule 3007-2 MODIFICATION OF SCHEDULES OF CLAIMS

If a claim is scheduled by the debtor and is not listed as disputed, contingent, or unliquidated, and a proof of claim has not been filed under Bankruptcy Rules 3003, 3004 and/or 3005, the debtor may not object to the claim. The debtor may amend the debtor's schedules under Bankruptcy Rule 1009 and provide notice as required by E.D.N.Y. LBR 1009-1(b). If the amendment modifies a creditor's scheduled claim or adds a creditor to the schedules of claims and if the deadline by which proofs of claim must be filed has expired or will expire in less than 30 days, the creditor shall have 30 days from the effective date of amendment to file a proof of claim.

CROSS-REFERENCE: E.D.N.Y. LBR 1009-1
REFERENCES: Bankruptcy Rules 1009, 3003, 3004, 3005

Rule 3015-1 CHAPTER 13 PLAN

(a) *Service of Plan.*

~~If a A chapter 13 petition is filed without a plan, or if a case is converted to one under chapter 13, the~~ debtor shall:

~~(i) file the plan within 15 days, unless an extension is requested and granted by the Court; and~~

~~(ii)~~—serve the plan on the trustee and all creditors within ~~107~~ days of filing the plan and file proof of service thereof.

(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 notice of that fact to the debtor, the trustee, the United States trustee, and all creditors. Separate notices shall not be required if the plan, or a summary of the plan, states the date(s) and amount of any payments to be made to the attorney, and is served upon all parties in interest at least ~~15~~14 days prior to the confirmation hearing.

Rule 3015-2 CHAPTER 13 PLAN MODIFICATION

(a) *Modification of Chapter 13 Plan Before Confirmation.*

If a debtor in a chapter 13 case proposes to modify his or her chapter 13 plan before confirmation, and the modification of the chapter 13 plan adversely affects the treatment of the claim of any creditor, the debtor shall serve a copy of the modified plan on the trustee and on all creditors not later than ~~10~~14 days prior to the hearing on confirmation or any adjournment thereof.

(b) *Modification of Chapter 13 Plan After Confirmation.*

If a debtor in a chapter 13 case proposes to modify his or her chapter 13 plan after confirmation, the debtor shall proceed by motion or on presentment in accordance with E.D.N.Y. LBR 2002-1, if there is compliance with Bankruptcy Rule 3015(g). A copy of the proposed modified plan shall be attached to the motion or notice of presentment.

CROSS-REFERENCE: E.D.N.Y. LBR 2002-1

Rule 3015-3 HEARING ON CONFIRMATION OF CHAPTER 13 PLAN

Unless excused, the debtor and debtor's attorney shall attend the hearing on confirmation of the chapter 13 plan.

**Rule 3016-1 OMISSION OF SEPARATE DISCLOSURE STATEMENT
IN CHAPTER 11 SMALL BUSINESS CASES: DISCLAIMER**

When a chapter 11 case is a small business case as defined in Bankruptcy Code § 101(51C), and the Court finds that the plan provides adequate information under Bankruptcy Code § 1125(f)(1) and a separate disclosure statement is unnecessary, such plan shall have on its cover, in boldface type, the following language or words of similar import:

THE DEBTOR IN THIS CASE IS A SMALL BUSINESS. THE COURT HAS CONDITIONALLY FOUND THAT THIS PLAN PROVIDES ADEQUATE INFORMATION AS REQUIRED UNDER 11 U.S.C. § 1125(a)(1). AS A RESULT, THE DEBTOR MAY DISTRIBUTE THIS PLAN WITHOUT FILING A DISCLOSURE STATEMENT. IF A PARTY IN INTEREST FILES AN OBJECTION TO THIS PLAN BASED ON LACK OF ADEQUATE INFORMATION, THE COURT SHALL MAKE A FINDING REGARDING COMPLIANCE WITH 11 U.S.C. § 1125(a)(1) AT OR BEFORE THE HEARING ON CONFIRMATION OF THE PLAN.

REFERENCES: Bankruptcy Code §§ 101(51C), 1125(f)(1); Bankruptcy Rule 3017.1

Rule 3017-1 PROPOSED DISCLOSURE STATEMENTS IN CHAPTER 9 AND 11 CASES: TRANSMITTAL AND DISCLAIMER

(a) *Transmittal.*

The proponent of a plan shall transmit all notices and documents required to be transmitted by Bankruptcy Rule 3017(a).

(b) *Disclaimer.*

Before a proposed disclosure statement has been approved, it shall have on its cover, in boldface type, the following language or words of similar import:

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

(c) *Disclosure Statement Disclaimer in Small Business Cases.*

When a chapter 11 case is a small business case as defined in Bankruptcy Code § 101(51C), after conditional approval, but before final approval of a proposed disclosure statement has been given, such statement shall have on its cover, in boldface type, the following language or words of similar import:

THE DEBTOR IN THIS CASE IS A SMALL BUSINESS. AS A RESULT, THE DEBTOR MAY DISTRIBUTE THIS DISCLOSURE STATEMENT BEFORE ITS FINAL APPROVAL BY THE COURT. IF AN OBJECTION TO THIS DISCLOSURE STATEMENT IS FILED BY A PARTY IN INTEREST, FINAL APPROVAL OF THIS

DISCLOSURE STATEMENT WILL BE CONSIDERED AT OR BEFORE THE HEARING ON CONFIRMATION OF THE PLAN.

REFERENCE: Bankruptcy Code § 101(51C)

Rule 3018-1 SUMMARY AND CERTIFICATION OF ACCEPTANCE OR REJECTION OF PLANS IN CHAPTER 9 AND 11 CASES

(a) *Summary of Ballots and Notice of Cramdown.*

At least ~~5~~⁷ business days prior to the hearing on confirmation of a chapter 9 or 11 plan, the proponent of the plan shall file, and serve upon the United States trustee and counsel to any committee appointed in the case, a one-page statement setting forth the following information:

- (i) a summary of the ballots received;
- (ii) whether the proponent proposes to confirm the plan over the objection of one or more impaired classes; and
- (iii) whether any witnesses other than the proponent's witness in favor of the plan are expected to testify as to any facts relevant to confirmation (testimony by the proponent on behalf of the plan is required).

(b) *Certification of Vote.*

Prior to the hearing on confirmation of a chapter 9 or 11 plan, the proponent of a plan or the party authorized to receive the acceptances and rejections of the plan shall file a certification setting forth the amount and number of allowed claims or allowed interests of each class accepting or rejecting the plan. A copy of the certification shall be served upon the debtor, the trustee, each committee, and the United States trustee. The Court may find that the plan has been accepted or rejected on the basis of the certification.

(c) *Notice of Ineffective Election.*

If a plan in a chapter 9 or 11 case permits the holder of a claim or interest to make an election with respect to the treatment of the claim or interest, and if the holder's election is deemed ineffective or otherwise is not counted by the person authorized to tabulate ballots, that person shall give notice of that fact to the holder at least ~~5~~⁷ days prior to the hearing on confirmation.

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

(a) *Objections to Confirmation.*

Objections to confirmation of a plan shall be filed at least ~~5 Business Days~~ 7 days prior to the hearing to consider confirmation of the plan.

(b) *Withdrawal of Objections.*

If an objection to confirmation of a plan is withdrawn, the proponent shall disclose to the Court the reasons for the withdrawal, including the terms of any agreement precipitating the withdrawal of the objection.

Rule 3020-2 **CONFIRMATION ORDERS IN CHAPTER 9 AND 11 CASES**

A proposed order confirming a chapter 9 or 11 plan shall have annexed a copy of the plan to be confirmed.

~~Committee Note: This rule is derived from former E.D.N.Y. LBR 3021-1(a), which was omitted from these rules.~~

~~**Rule 3021-1** **CONFIRMATION REQUIREMENTS IN CHAPTER 9
AND 11 CASES**~~

~~[ABROGATED]~~

~~Committee Note: Subdivision (a) of Former E.D.N.Y. 3021-1 was redesignated E.D.N.Y. LBR 3020-2. Subdivision (b) of Former E.D.N.Y. 3021-1 was abrogated because it is no longer applicable. Subdivision (c) of Former E.D.N.Y. 3021-1 was redesignated E.D.N.Y. LBR 3022-1.~~

Rule 3022-1 **FINAL DECREE**

Within 90 days after confirmation, the plan proponent shall file, on notice to the United States trustee, an application and a proposed order for a final decree pursuant to Bankruptcy Rule 3022. Upon request, the Court may reduce or extend the time to file such application.

PART IV THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1 RELIEF FROM AUTOMATIC STAY

(a) *By Motion.*

A motion for relief from the automatic stay under Bankruptcy Code § 362 shall be made returnable within 30 days of the date filed.

(b) *By Presentment.*

If a motion for relief from the automatic stay under Bankruptcy Code § 362 is made by presentment as set forth in E.D.N.Y. LBR 2002-1, and a hearing is scheduled, the time limitation set forth in Bankruptcy Code § 362(e) is deemed waived.

CROSS-REFERENCES: E.D.N.Y. LBR 2002-1, 5070-1

REFERENCE: Bankruptcy Code § 362

Rule 4001-2 ORDERS CONFIRMING THE INAPPLICABILITY OF THE AUTOMATIC STAY

A request for an order pursuant to Bankruptcy Code §§ 362(c)(4)(A)(ii) or (j) shall be on notice to the debtor, the debtor's attorney, if any, and the trustee and shall include evidence of entitlement to the order.

REFERENCES: Bankruptcy Code § 362(c)(4)(A)(ii), (j).

Rule 4001-3 ORDERS CONTINUING OR IMPOSING THE AUTOMATIC STAY

A motion for an order pursuant to Bankruptcy Code § 362(c)(3)(B) continuing the automatic stay or an order pursuant to Bankruptcy Code § 362(c)(4)(B) imposing the automatic stay shall be on notice to all parties in interest, including but not limited to, all creditors and the trustee.

REFERENCES: Bankruptcy Code § 362(c)(3)(B), (c)(4)(B)

Rule 4001-4 PAYMENT AND CURE OF PRE-PETITION JUDGMENT OF POSSESSION INVOLVING RESIDENTIAL PROPERTY

(a) A debtor seeking to obtain a 30-day stay of eviction pursuant to Bankruptcy Code § 362(b)(22) and (l) shall:

- (i) provide the landlord's name and address in the certification required under Bankruptcy Code § 362(l)(1);

- (ii) deliver to the Clerk, together with the petition (or, if the petition is filed electronically, ~~within 1 Business Day of~~ no later than the day after the filing), 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 30-day period after the filing of the petition;
 - (iii) serve the landlord with a copy of the debtor's petition;
 - (iv) file a copy of the judgment for possession, if available; and
 - (v) if the landlord objects to the debtor's certification, attend the hearing on such objection.
- (b) A debtor who obtained a 30-day stay pursuant to Bankruptcy Code § 362(b)(22) and (1) and who wishes to extend the stay beyond the 30-day period shall comply with subdivision (a) of this rule and, within the 30-day period after the filing of the petition, shall:
- (i) cure the entire monetary default that gave rise to the judgment of possession; and
 - (ii) if the landlord objects to the debtor's certification under Bankruptcy Code § 362(1)(2) that the entire monetary default that gave rise to the judgment of possession has been cured, attend the hearing on such objection.

REFERENCE: Bankruptcy Code § 362(b)(22), (1).

Rule 4001-5 CASH COLLATERAL AND OBTAINING CREDIT

(a) *Motions.*

In addition to the requirements set forth in Bankruptcy Rule 4001, all motions to use cash collateral and to obtain credit pursuant to Bankruptcy Code §§ 363 and 364 ("Financing Motions") shall recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement, and state the justification for the inclusion of such provision:

- (i) the absence of any carve-out for professional fees, or provisions that provide treatment for the professionals retained by the debtor that is different than that provided for the professionals retained by a creditors' committee with respect to a professional fee carve-out;

- (ii) provisions that require the debtor to pay the secured creditor's expenses and attorneys' fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States trustee, creditors' committee (if formed), or the Court; or
- (iii) provisions that exclude from a carve-out any request for professional fees related to the investigation of whether the secured creditor's lien is valid and/or properly perfected.

(b) *Interim Relief.*

When Financing Motions are filed with the Court on or shortly after the date of entry of the order for relief, the Court may grant interim relief on shortened notice. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court will not approve *ex parte* interim financing orders that include any of the provisions listed in Bankruptcy Rule 4001 and in subdivision (a)(i)-(iii), inclusive, of this rule.

REFERENCES: Bankruptcy Code §§ 363 and 364

Committee Note: ~~The proposed amendments to Bankruptcy Rule 4001, which took effect on December 1, 2007, contain provisions governing the form of cash collateral and financing motions.~~ This rule is not intended to supersede or duplicate Bankruptcy Rule 4001, but imposes additional requirements on proponents of cash collateral and financing motions.

**Rule 4002-1 PERSONAL IDENTIFIERS AND TAX INFORMATION
OF THE DEBTOR**

(a) *Debtor's Duty to Redact Personal Identifiers.*

An individual debtor providing information to the trustee or a creditor pursuant to Bankruptcy Code § 521(e) shall redact personal identifiers as follows:

- (i) if an individual's social security number, alien registration number, or tax identification number is included, only the last four digits of that number shall appear;
- (ii) if minor children are identified by name, only the children's initials shall appear;
- (iii) if an individual's date of birth is included, only the year shall appear; and

- (iv) if financial account numbers are provided, only the last four digits of these numbers shall appear.

(b) *Electronic Filing of Debtor's Tax Information.*

All tax information electronically filed shall be entered under the event titled "Tax Documents" (Category-Other) in the CM/ECF event list.

(c) *Procedure for Requesting Tax Information Filed With the Court Pursuant to Bankruptcy Code § 521(f).*

Any party in interest seeking access to a debtor's tax information that is filed with the Court pursuant to Bankruptcy Code § 521(f) shall file a motion with the Court on notice to the debtor and the debtor's attorney, if any. A motion requesting access to such information shall include:

- (i) a description of the movant's status in the case;
- (ii) a description of the specific tax information sought;
- (iii) a statement indicating that the information cannot be obtained by the movant from any other sources; and
- (iv) an explanation of the movant's need for the tax information.

(d) *Procedure for Obtaining Access to Tax Information Filed With the Court Pursuant to Bankruptcy Code § 521(f) After Access to the Tax Information Is Granted.*

Any party in interest whose motion seeking to obtain access to a debtor's tax information filed pursuant to Bankruptcy Code § 521(f) was granted by the Court shall present to the Clerk a copy of the Court's order granting such movant access to the tax information and a valid, government issued picture identification card in order to obtain such tax information.

(e) *Confidentiality of Personal Identifiers.*

Any party in interest who obtains the personal identifiers listed in subdivision (a) of this rule shall keep such information confidential and shall disclose it only to an employee or financial or legal advisor with a need to know such information in connection with the bankruptcy case. Any person or entity who uses, discloses, or disseminates personal identifiers in a manner inconsistent with this rule may be found in contempt of court and may be subject to penalties therefor.

(f) *Confidentiality of Tax Information.*

Any party in interest who obtains tax information of the debtor shall keep such information confidential and shall disclose only to the extent necessary in connection with the case or related adversary proceeding. Any party in interest who seeks to disclose tax information of the debtor for any other purpose shall seek authority to do so by motion on notice to the debtor and the debtor's attorney, if any. Any person or entity who discloses a debtor's tax information in a manner inconsistent with this rule may be found in contempt of court and may be subject to penalties therefor.

(g) *Waiver of Protection of Personal Identifiers.*

An individual debtor waives the protection of subdivisions (e) of this rule as to personal identifiers provided to the trustee or a creditor pursuant to Bankruptcy Code § 521(e) to the extent such personal identifiers are not redacted in accordance with subdivision (a) of this rule.

REFERENCES: Bankruptcy Code § 521(e); Bankruptcy Rule 9037; Director of the Administrative Office of the United States Courts' Interim Guidance Regarding Tax Information under 11 U.S.C. § 521 dated Sept. 20, 2005.

Rule 4003-1 AMENDMENT TO CLAIM OF EXEMPTIONS

An amendment to a claim of exemptions pursuant to Bankruptcy Rules 1009 and 4003 and these rules shall be filed and served on the trustee, the United States trustee, all creditors, and other parties in interest. An amendment shall not be effective until proof of service is filed, which shall be done within ~~10~~7 days of service.

CROSS-REFERENCE: E.D.N.Y. LBR 1009-1

REFERENCE: Bankruptcy Rule 1009

Rule 4003-2 OBJECTION TO A CLAIM OF EXEMPTION

[ABROGATED]

~~—An objection to a claim of exemption shall be served on the debtor in addition to the parties specified in Bankruptcy Rule 4003(b)(3).~~

~~Committee Note:—This rule shall be deemed abrogated to the extent it becomes duplicative of Bankruptcy Rule 4003.~~

**Rule 4004-1 SETTLEMENT OR DISMISSAL OF PROCEEDINGS
OBJECTING TO DISCHARGE**

A complaint objecting to discharge may be settled or dismissed only if the debtor or representative of the objecting party files an affidavit or affirmation setting forth what consideration, if any, has been paid or promised to the objecting party. The affidavit or affirmation must be served upon the trustee, all creditors, and other parties in interest.

**Rule 4007-1 SETTLEMENT OR DISMISSAL OF PROCEEDINGS
OBJECTING TO DISCHARGEABILITY**

In all instances not governed by Bankruptcy Code § 524(d), an adversary proceeding objecting to dischargeability of a debt may be settled or dismissed only if a proponent of the settlement or dismissal files an affidavit or affirmation setting forth the terms of any agreement entered into between the debtor and creditor relating to the payment of the debt in whole or in part.

REFERENCE: Bankruptcy Code § 524(d)

PART V COURTS AND CLERKS

Rule 5001-1 CLERK’S OFFICE: CONTACT INFORMATION

(a) *Mailing Addresses.*

Brooklyn Cases:
United States Bankruptcy Court
Eastern District of New York
271 Cadman Plaza East
Suite 1595
Brooklyn, New York 11201-1800

Central Islip Cases:
United States Bankruptcy Court
Eastern District of New York
290 Federal Plaza
P.O. Box 9013
Central Islip, New York 11722-9013

(b) *Physical Addresses and Phone Numbers.*

Brooklyn Office:
United States Bankruptcy Court
[Conrad B. Duberstein Courthouse](#)
271 Cadman Plaza East
Brooklyn, New York 11201
Phone No. (347) 394-1700

Central Islip Office:
United States Bankruptcy Court
Alphonse M. D’Amato
~~Federal~~[U.S.](#) Courthouse
290 Federal Plaza
Central Islip, New York 11722
Phone No. (631) 712-6200

(c) *Website Address.*

The Court's Website is located at www.nyeb.uscourts.gov.

Rule 5001-2 CLERK'S OFFICE: HOURS; AFTER HOURS FILING

The offices of the Clerk shall be open Monday through Friday between the hours of 9:00 a.m. and 4:30 p.m., except on legal or court holidays, and shall be closed on Saturdays and Sundays. When the Clerk's office is closed, papers relating to cases pending in Brooklyn may be submitted in a night depository located in the courthouse lobby of the United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201; When the Clerk's office is closed, papers relating to cases pending in Central Islip may be submitted in a night depository located in the courthouse lobby of the Alfonse M. D'Amato ~~Federal~~ U.S. Courthouse, 290 Federal Plaza, Central Islip, New York 11722. If the Alfonse M. D'Amato U.S. Courthouse is closed, papers may be submitted in a night depository located in the courthouse lobby of the United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201. If the papers are deposited in a night depository, they will be deemed filed as of the exact time and date stamped on the papers.

Persons may review records, request files for review, review dockets, request dockets for review, or make a public inquiry at the Clerk's office between the hours of 9:00 a.m. and 4:00 p.m. Telephone inquiries to the Clerk's office may be made between the hours of 9:00 a.m. and 4:00 p.m.

Committee Note: Parties shall consult the Court's Website for the hours of accessibility to the night depositories in each Court location.

~~Rule 5005-1 FILING AND TRANSMITTAL OF PAPERS IN NON-ELECTRONIC CASES~~

~~All papers in any Non-electronic Case shall be filed in the office of the Clerk located where the Judge who is assigned to the matter regularly sits.~~

Rule 5005-2 FILING BY ELECTRONIC MEANS

(a) *Password and Registration.*

(i) *Attorneys*

An attorney admitted to practice before the Court may obtain a password to permit the attorney to file documents electronically. An attorney may register to use the electronic filing system by filing a password application.

(ii) *Limited Creditors*

Creditors may register for limited use of the electronic filing system by filing a password application.

(b) *Filing Requirements.*

- (i) All motions, pleadings, memoranda of law, exhibits, and other documents required to be filed with the Court in connection with a case and documents filed under seal in accordance with E.D.N.Y. LBR 9018, shall be electronically filed over the Internet. ~~Within 1 Business Day of~~ No later than the day after the electronic filing, a chambers copy shall be filed with the Clerk to the attention of the appropriate Judge's chambers, which copy is to be marked "Chambers Copy." The date and time of the electronic filing shall be the official date and time of the filing of the document.
- (ii) Proofs of claim may be filed electronically. A "Chambers Copy" shall not be filed with the Clerk.
- (iii) All documents that form part of a motion or pleading, and which are being filed at the same time and by the same party, except for a memorandum of law, may be electronically filed together under one docket number. A memorandum of law shall be filed separately and shall indicate the motion or pleading to which it relates.
- (iv) Relevant excerpts of exhibits that are not in electronic form shall be scanned and electronically filed. Such document excerpts shall be identified as excerpts, shall not exceed 20 pages, and shall state that the entire document is in the possession of the filing party and is available upon request. The complete exhibit shall be made available forthwith to counsel on request, and shall be available in the courtroom at any hearing on the matter. Persons filing excerpts of exhibits pursuant to these procedures do so without prejudice to their right to file additional excerpts or the entire exhibit with the Court at any time. Opposing parties

may file any additional excerpts that they believe to be germane. Chambers copies of complete exhibits shall be provided to the Court on request.

CROSS-REFERENCE: E.D.N.Y. LBR 9018-1
REFERENCE: General Order on Electronic Filing Procedures
Committee Note: Attorney and Limited Creditor ECF password applications are available at the intake counter of the Clerk's office and at the Court's Website.
[Former E.D.N.Y. LBR 5005-1 was stricken, and Former E.D.N.Y. LBR 5005-2 was redesignated E.D.N.Y. 5005-1.](#)

Rule 5010-1 REOPENING CASES

(a) *Contents of Motion.*

A motion to reopen a case pursuant to Bankruptcy Code § 350(b) and Bankruptcy Rule 5010 shall state the name of the Judge to whom the case had been assigned and the date on which the case was closed.

(b) *Assignment of Matter.*

The Clerk shall assign the motion to the Judge to whom the case had been assigned at the time it was closed. If that Judge is no longer sitting, the motion shall be assigned in accordance with E.D.N.Y. LBR 1073-1.

(c) *Filing Fee.*

A filing fee shall be due at the time of making a motion to reopen a case (including a motion to reopen for the purpose of filing a personal financial management certificate) in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, except that no filing fee shall be due if the reopening is requested to correct an administrative error, or for actions related to the debtor's discharge. The Court may defer or waive the filing fee under appropriate circumstances.

CROSS-REFERENCE: E.D.N.Y. LBR 1073-1
REFERENCES: Bankruptcy Code §§ 111, 350(b), 727;
Bankruptcy Rule 4006; 28 U.S.C. § 1930(a)

Rule 5011-1 WITHDRAWAL OF REFERENCE

A motion for withdrawal of the reference shall be filed with the Court, and the Clerk shall transmit the motion to the District Clerk promptly and so notify the movant. The movant shall be responsible for notifying all other parties. Following the transmittal

of the motion, all further papers with respect to the motion shall be filed in the District Court.

Rule 5070-1 CALENDARS AND SCHEDULING

(a) *Obtaining Return Date.*

Prior to serving a motion or application, the moving party or applicant shall obtain a return date from the Court's Website, if appropriate, or from the Judge's courtroom deputy or chambers.

(b) *Adjournments Without Date.*

Any matter adjourned without date and not restored to the calendar within 60 days may be deemed withdrawn without prejudice.

CROSS-REFERENCES: E.D.N.Y. LBR 2002-1, 4001-1
Committee Note: Parties shall consult the Court's Website for each Judge's procedures with respect to the designation of return and adjournment dates.

Rule 5073-1 CAMERAS, RADIO, RECORDERS AND OTHER ELECTRONIC DEVICES

[ABROGATED]

Committee Note: Parties are directed to the Court's Website for the Court's policy on cameras, radio, recorders, and other electronic devices.

Rule 5075-1 USE OF SERVICES AND AGENTS

The Court may permit, subject to the supervision of the Clerk, the use of services and agents to maintain Court records, issue notices, file certain documents, and maintain and disseminate other administrative information when the costs of such services and agents are paid for by the estate.

CROSS-REFERENCES: E.D.N.Y. LBR 3007-1, 3007-2

Rule 5080-1 FEES – GENERAL

Except as otherwise authorized by statute, rule, or order, the Clerk shall not render any service for which a fee is prescribed by statute or by the Judicial Conference of the

United States unless the fee has been paid or waived, or an application for waiver of the filing fee under applicable law is pending.

REFERENCES: 28 U.S.C. § 1930, Bankruptcy Rule 1006

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004-1 SALE OF PROPERTY, APPRAISALS AND AUCTIONS

(a) *Conflict of Interest.*

An appraiser, auctioneer, or officer, director, stockholder, agent, employee, or insider of an appraiser or auctioneer, or any relative of any of the foregoing, shall not purchase, directly or indirectly, or have a financial interest in the purchase of, any property of the estate that the appraiser or auctioneer has been employed to appraise or sell.

(b) *Notice of Sale of Estate Property by Private Sale.*

A party seeking to sell property of the estate outside the ordinary course of business shall give the notice required by Bankruptcy Rule 2002(a)(2) and, if applicable, Bankruptcy Rule 6004(g). Such notice shall contain:

- (i) a general description of the property;
- (ii) a statement explaining where a complete description or inventory of the property may be obtained or examined;
- (iii) the terms of sale, including the upset price, if any, the procedures for bidding on the property to be sold, and the terms of any pending offer proposed to be accepted;
- (iv) the place, date, and time of the sale;
- (v) the place, date, and time the property may be examined prior to the sale;
- (vi) the date by which objections to the sale must be filed with the Court;
- (vii) the date of the hearing to consider any objections to the sale; and
- (viii) the name and address of the trustee, if any.

(c) *Manner of Display and Conduct of Auction.*

The auction shall be conducted in the following manner:

- (i) the property shall be on public display for a reasonable period of time prior to the auction;
- (ii) prior to receiving bids, the auctioneer shall announce the terms of sale;
- (iii) when practicable, the property shall be offered for sale first in bulk and then in lots; and
- (iv) any property that is not to be included in the auction shall be set apart and conspicuously marked “not included in the sale,” and such fact shall be announced by the auctioneer before the auction.

(d) *Joint Auctions.*

Whenever the trustee and a secured party, or other third party having an interest in the property, desire to conduct a joint auction, the Court may enter an order fixing the method of allocating the commissions and expenses of sale.

(e) *Proceeds of Auction.*

Upon receipt of the proceeds of sale, the auctioneer shall immediately deposit the proceeds in a separate account that the auctioneer maintains for the estate in accordance with Bankruptcy Code § 345(a). Payment of the gross proceeds of the sale shall be made promptly by the auctioneer to the trustee or debtor in possession, but in no event later than ~~10~~7 days after the proceeds are received.

(f) *Report of Auction.*

Within ~~20~~21 days after the last date of the auction, the auctioneer shall file a verified report and provide the report to the trustee and the United States trustee. If all proceeds of the auction have not been received by such date, the auctioneer shall file a supplemental report within ~~10~~14 days after all proceeds have been received. The report shall set forth:

- (i) the time, date, and place of the auction;
- (ii) the gross dollar amount received at the auction;

- (iii) 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;
- (iv) an itemized statement of expenditures, disbursements, and commissions allowable under E.D.N.Y. LBR 6005-1, including the name and address of the payee and receipts or canceled checks for the expenditures or disbursements. When labor charges are included, the report shall specify the days worked and the number of hours worked each day by each person supported, by an affidavit from every person receiving compensation which also sets forth all amounts received. 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;
- (v) when the auctioneer has a blanket insurance policy covering all sales conducted by the auctioneer, a statement of how any insurance expense charged to the estate was computed;
- (vi) if any articles were withdrawn from the auction because of a third party claim of an interest therein, a statement of the articles and the names of the third parties;
- (vii) the names and addresses of all purchasers;
- (viii) the sign-in sheet, or, if none, the approximate number of people attending the auction;
- (ix) the items for which there were no bids and the disposition of those items;
- (x) the terms of sale that were announced prior to receiving bids;
- (xi) a statement of the manner and extent of advertising of the auction, including a copy of the published advertisement and a certificate of publication;
- (xii) a statement of the manner and extent of the availability of the items for inspection;
- (xiii) a copy of the order retaining the auctioneer; and

(xiv) any other information that the trustee, the United States trustee, or the Court may request.

(g) *Affidavit to Accompany Report of Auction.*

The auctioneer shall submit with the report of auction an affidavit stating:

- (i) whether the auctioneer is duly licensed;
- (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 auction were reasonable and necessary; and
- (vi) that the gross proceeds were remitted to the trustee or debtor in possession and the date of the remittance.

(h) *Notice of Sale by Auction; Advertisement and Publication.*

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;
- (iii) the terms and conditions of the sale; and
- (iv) the name, address, and telephone number of the auctioneer.

The Judge 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, an order of the Court shall not be required to confirm a sale of property otherwise authorized by the Bankruptcy Code, the Bankruptcy

Rules, or Court order. 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 Clerk and transmit to the United States trustee a report of the sale as required by Bankruptcy Rule 6004(f) when the sale is completed. On request, the Clerk shall issue a certificate stating that a notice of a proposed auction, with proof of service, has been filed pursuant to E.D.N.Y. LBR 2002-1 and that no timely objection has been filed.

CROSS-REFERENCES: E.D.N.Y. LBR 2002-1, 2014-1, 6005-1, 9018-1
REFERENCES: Bankruptcy Code § 245(a); Bankruptcy Rules 2002, 6004,
General Order on Electronic Filing Procedures

~~Committee Note: Subdivisions (e) and (d) of former E.D.N.Y. LBR 6004-1 were abrogated.~~

Rule 6005-1 AUCTIONEERS

(a) Retention of Auctioneer.

A debtor in possession or trustee may retain the services of an auctioneer, subject to prior Court approval.

(b) Compensation.

An auctioneer may be allowed to receive commissions and reimbursement of expenses for sales of property, subject to Court approval, in an amount not to exceed:

- (i) 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

- (ii) 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 may be reimbursed for expenditures related thereto. No travel expenses shall be allowed, except as ordered by the Court.

(c) *Bond.*

An auctioneer employed pursuant to Bankruptcy Code § 327 shall not act until the auctioneer files and provides to the United States trustee, 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, conditioned upon:

- (i) the faithful and prompt accounting for all monies and property that may come into the auctioneer's possession;
- (ii) compliance with all rules, orders, and decrees of the Court;
and
- (iii) the faithful performance of the auctioneer's duties.

(d) *Blanket Bond.*

In lieu of a bond in each case, an auctioneer may 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.

(e) *Application for Commissions and Reimbursement of Expenses.*

An auctioneer shall file an application with the Clerk for approval of commissions and reimbursement of expenses and give notice in accordance with Bankruptcy Rule 2002(a). An application may not be granted if the report of sale and accompanying affidavit described in E.D.N.Y. LBR 6004-1(f) and (g) have not been filed. The application shall state whether the debtor or the trustee has any objection to such application.

CROSS-REFERENCES: E.D.N.Y. LBR 2014-1, 6004-1, 9025-1
REFERENCE: Bankruptcy Code § 327; Bankruptcy Rule 2002

Rule 6007-1 ABANDONMENT OR DISPOSITION OF PROPERTY

Notice of a proposed abandonment or disposition of property pursuant to Bankruptcy Rule 6007(a) shall describe the property to be abandoned or disposed of and state the reason for the proposed abandonment or disposition.

PART VII ADVERSARY PROCEEDINGS

Rule 7005-1 FILING OF DISCOVERY-RELATED DOCUMENTS

Transcripts of depositions, exhibits to depositions, interrogatories, responses to interrogatories, document requests, responses to document requests, requests for admissions, and responses to requests for admissions are not required to be filed, but may be filed when necessary for the consideration of a matter by the Court.

CROSS-REFERENCE: E.D.N.Y. LBR 8007-1.

~~Committee Note: Former E.D.N.Y. LBR 7005-1(b) was abrogated.~~

Rule 7007-1 DISCOVERY RELATED MOTIONS

A discovery motion under Bankruptcy Rules 7026 through 7037 shall be supported by an affidavit or affirmation certifying that the moving party has made a good faith effort to confer with the opposing party to resolve the issues raised by the motion by agreement and without judicial intervention, but has been unable to reach an agreement. The affidavit or affirmation shall describe the efforts to resolve the discovery dispute without judicial intervention. The affidavit or affirmation shall specify any issues so resolved and the issues remaining unresolved. The affidavit or affirmation shall be filed and served together with the motion.

CROSS-REFERENCES: E.D.N.Y. LBR 9006-1, 9013-1

REFERENCES: Bankruptcy Rules 7026, 7037

~~**Rule 7024-1 NOTICE OF CLAIM OF UNCONSTITUTIONALITY**~~

~~[ABROGATED]~~

~~Committee Note: Former E.D.N.Y. LBR 7024-1 was redesignated E.D.N.Y. LBR 9005-1.~~

Rule 7054-1 TAXABLE COSTS

District Rule 54.1 applies in cases and adversary proceedings.

REFERENCE: District Rule 54.1

Rule 7055-1 DEFAULT JUDGMENT

A ~~motion seeking a~~ default judgment may be sought only by motion, which shall be served on the defaulting party, the defaulting party's attorney, if any, and, except in an adversary proceeding to determine dischargeability, the trustee.

Rule 7056-1 SUMMARY JUDGMENT

A motion for summary judgment pursuant to Bankruptcy Rule 7056 shall include a separate statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may be grounds for denial of the motion. The opposition to a motion for summary judgment shall include a separate statement of the material facts as to which it is contended that there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted by the opposing party unless controverted by the statement required to be served by the opposing party. Each statement of material fact by a movant or opponent must be followed by citation to evidence which would be admissible, set forth as required by Federal Rule of Civil Procedure 56(e).

REFERENCE: Federal Rule of Civil Procedure 56(e)

PART VIII APPEALS

**Rule 8004-1 COPIES OF NOTICE OF APPEAL AND CERTIFICATION
FOR DIRECT APPEAL TO CIRCUIT COURT**

No later than ~~1 Business Day~~the day after the filing of a notice of appeal, the appellant shall provide the Clerk with sufficient copies of the notice of appeal or certification for direct appeal and address labels for all parties to be served to permit the Clerk to comply with Bankruptcy Rule 8004.

Rule 8006-1 RECORD ON APPEAL

(a) *Designation of Items.*

~~(i) Non-electronic Cases.~~

~~A party filing a designation of items to be included in a record on appeal pursuant to Bankruptcy Rule 8006 in a Non-electronic Case shall provide the Clerk with a copy of each item designated. The Clerk shall transmit to the District Clerk, as the record on appeal, copies of the designated items.~~

~~(ii) Electronic Cases.~~

When a party files a designation of items to be included in a record on appeal pursuant to Bankruptcy Rule 8006 and an item is not docketed in electronic format, or only an excerpted version of an item is on the docket, that party shall provide the Clerk with a full copy of such designated item. The Clerk shall transmit to the District Clerk, as the record on appeal, the full copies of such ~~excerpted~~ items. A party shall electronically file in the bankruptcy case any item that party has designated that does not already appear on the docket.

(b) *Exhibits Not Designated.*

Exhibits not designated to be included in a record on appeal shall remain in the custody of the attorney who has possession of such exhibits, who shall have the responsibility of promptly forwarding them to the clerk of the appellate court upon that clerk's request.

(c) *Filing Papers Relating to the Appeal.*

Upon the docketing of the notice of appeal in the District Court, all papers relating to the appeal shall be filed electronically with the District Clerk, ~~whether the case is an Electronic Case or Non-electronic Case,~~ except for a request for a stay pending appeal, which must be filed in accordance with Bankruptcy Rule 8005.

REFERENCE: Bankruptcy Rules 8005 and 8007
~~Committee Note: This is former E.D.N.Y. LBR 8007-1.~~

**Rule 8016-1 ORDER, JUDGMENT OR REMAND BY
 APPELLATE COURT**

An order or judgment of an appellate court, when filed in the office of the Clerk, shall become the order or judgment of the Court and be entered as such by the Clerk without further order. If the order or judgment of the appellate court remands for further

proceedings, a motion for such further proceedings shall be made by the appropriate party within ~~20~~21 days of the remand and referred to the Judge who heard the proceeding below, unless the appellate court orders otherwise.

PART IX GENERAL PROVISIONS

Rule 9001-1 DEFINITIONS

(a) *Definitions.*

Unless inconsistent with the context, in these rules -

- (i) “*Bankruptcy Code*” or “*Code*” means title 11 of the United States Code, as amended from time to time;
- (ii) “*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;
- (iii) “*Chief Judge*” means the Chief Judge of the Court;
- ~~(v)~~ iv “*Clerk*” means the clerk or a deputy clerk of the Court;
- ~~(vi)~~ v “*Court*” means the United States Bankruptcy Court for the Eastern District of New York and any Judge;
- ~~(vii)~~ vi “*Court’s Website*” means www.nyeb.uscourts.gov;
- ~~(viii)~~ vii “*District Clerk*” means the clerk or a deputy clerk of the District Court;
- ~~(ix)~~ viii “*District Court*” means the United States District Court for the Eastern District of New York;
- ~~(x)~~ ix “*District Judge*” means a United States District Judge or a judge appointed to, or sitting by designation in, the District Court;
- ~~(xi)~~ x “*District Rules*” means the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York;

~~(xii)~~ (xi) “*Electronic Case Filing*” or “*ECF*” means the Electronic Case File System implemented in this Court;

~~(xiii)~~ ~~“*Electronic Case*” means any case (except chapter 11) or adversary proceeding filed after January 1, 2003, or any chapter 11 case and any associated adversary proceeding filed after April 1, 2002;~~

~~(xiv)~~ (xii) “*Former E.D.N.Y. Local Bankruptcy Rules*” means the United States Bankruptcy Court Eastern District of New York Local Bankruptcy Rules, effective ~~July 1, 1999~~ May 28, 2008, as revised;

~~(xv)~~ (xiii) “*General Order on Electronic Filing Procedures*” means the Revised General Order on Electronic Filing Procedures, dated December 26, 2002, as amended from time to time;

~~(xvi)~~ (xiv) “*Judge*” means a bankruptcy judge appointed to or sitting by designation in the United States Bankruptcy Court for the Eastern District of New York (or, with respect to a proceeding that has not been referred or which has been withdrawn, the District Judge); and

~~(xvii)~~ ~~“*Non-electronic Case*” means any case (except chapter 11) or adversary proceeding filed before January 1, 2003, or any chapter 11 case and any associated adversary proceeding filed before April 1, 2002; and~~

~~(xviii)~~ (xv) “*United States trustee*” means the Office of the United States trustee for Region 2 or its authorized representative for the Eastern District of New York.

(b) *Construction.*

(i) Unless inconsistent with the context or stated otherwise above, words and phrases used in these rules shall be construed in accordance with the definitions and rules of construction set forth in the Bankruptcy Code and Bankruptcy Rules.

(ii) Unless inconsistent with the context or stated otherwise, the singular shall be construed to include the plural, and the plural shall be construed to include the singular.

(c) *Use of Terms “Documents” and “Papers.”*

The terms “documents” and “papers” as used in these rules include those filed or transmitted by electronic means.

Rule 9004-1 PAPERS -- REQUIREMENTS OF FORM

(a) *Papers Submitted for Filing.*

(i) Papers filed shall:

- (A) be plainly typed, printed, or copied;
- (B) have no erasures or interlineations which materially deface them; and
- (C) be signed in accordance with Bankruptcy Rule 9011.

(ii) Papers filed shall be on 8 ½" x 11" paper and shall not be stapled or otherwise bound on the side.

(b) *Amendments.*

An amendment filed as a matter of right or allowed by order shall be filed in a form that is complete, including exhibits, and shall not incorporate by reference any prior paper.

(c) *Chambers Copy.*

A paper copy of each document filed ~~electronically or otherwise~~, other than petitions, schedules, and proofs of claim, shall be marked “Chambers Copy” and delivered to the Clerk ~~within 1 Business Day of~~ no later than the day after filing.

CROSS-REFERENCES: E.D.N.Y. LBR 5005-1, 5005-2

Rule 9004-2 CAPTION -- PAPERS, GENERAL

(a) All papers submitted for filing shall have a caption stating “United States Bankruptcy Court, Eastern District of New York” and shall include the title and chapter of the case. Subsequent to the filing of the petition for relief, all papers shall also include the case number and the Judge code. All papers filed in an adversary proceeding shall also contain the full title of the lawsuit and the adversary proceeding case number. Except for involuntary petitions, all petitions for relief shall also set forth the last four digits of the debtor’s social security number and/or any other federal tax identification number of the debtor.

(b) In consolidated cases, the docket number for the lead case shall be listed first and shall be followed by the docket numbers of all cases contained in the consolidation in ascending order.

(c) The return date and time of a motion shall be included in the upper right hand corner of the caption of the motion and all related papers.

CROSS-REFERENCE: E.D.N.Y. LBR 5070-1

Rule 9005.1-1 NOTICE OF CLAIM OF UNCONSTITUTIONALITY

If a party raises a question concerning the constitutionality of an act of Congress or ~~a~~ state legislative body, that party shall notify the Court of the existence of the question, the title of the case and proceeding, the statute in question, and the grounds upon which it is claimed to be unconstitutional.

CROSS-REFERENCE: E.D.N.Y. LBR 9014-1

REFERENCE: 28 U.S.C. § 2403

~~Committee Note: This is former E.D.N.Y. LBR 7024-1.~~

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

(a) *Motions.*

Unless otherwise provided by these rules, the Bankruptcy Rules, or by Court order:

- (i) all motion papers shall be served at least ~~10~~14 days before the hearing date;
- (ii) any answering papers shall be served so as to be received not later than ~~3 Business Days~~7 days before the hearing date;
- (iii) any reply papers shall be served and filed, and a paper copy shall be delivered to the Clerk's office, at least ~~1 Business Day~~3 days prior to the hearing date.

Any party filing papers with the Court within ~~2 Business Days~~3 days prior to a hearing date shall contact chambers to advise that such papers have been filed.

(b) *Time for Filing with Clerk.*

All motions and answering papers (except reply papers as provided in subdivision (a) of this rule) shall be filed no later than ~~1 Business Day following~~ the day after the date of service.

(c) *Extra Time for Service.*

If papers are served by first-class mail, an additional 3 days shall be added to the minimum service requirement. If papers are served by overnight mail or courier, an additional day shall be added to the minimum service requirement.

CROSS-REFERENCES: E.D.N.Y. LBR 5005-1, 7007-1, 9013-1
REFERENCE: Bankruptcy Rule 2002

Rule 9011-1 SIGNING OF PAPERS

(a) Whenever Bankruptcy Rule 9011(a) requires a paper to be signed by an attorney or by a party acting *pro se*, the name of the attorney or party *pro se* shall be printed or typed below the signature.

(b) *Electronic Signatures.*

Whenever any applicable statute, rule, or order requires a document to be signed and the document is electronically filed ~~in an Electronic Case~~, the document shall contain an electronic signature or a scanned copy of the original signature. An electronic signature shall consist of “s/” followed by the first and last name of the person signing. The original executed document and any original exhibits, shall be maintained by the filer for two years after the entry of a final order closing the case or proceeding. On request of the Court, the filer shall provide an original document for review.

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

CROSS-REFERENCES: E.D.N.Y. LBR 1002-1(c) and (d), 5005-2
REFERENCE: 28 U.S.C. § 1746; Bankruptcy Rule 1008

Rule 9013-1 MOTION PRACTICE

(a) *Rule or Statutory Basis.*

A motion shall be in writing, unless made during a hearing, and shall specify the rules and statutory provisions upon which it is based and the legal authorities that support the requested relief, either in the motion or in a separate memorandum of law, and the factual grounds for relief. Failure to provide this information may be grounds to strike the motion from the calendar or deny the motion.

(b) *Responsive Papers.*

A response to a written motion shall be in writing and shall state the factual grounds upon which relief is opposed, and the legal authorities that support the respondent's position, either in the response or in a separate memorandum of law. Failure to provide this information may be grounds to strike the response or to grant the motion by default.

(c) *Proposed Order.*

Whenever possible, a motion shall be accompanied by a proposed order.

(d) *Entities to Receive Notice.*

In addition to the notice required by any applicable Bankruptcy Rule or local rule, notice of a motion shall be given to any entity having or claiming an interest in the subject matter of the proposed action or order or who otherwise would be affected by the proposed action or order.

(e) *Proof of Service.*

Unless the movant is proceeding by order to show cause or has otherwise requested that the Court issue an order scheduling a hearing under E.D.N.Y. LBR 9077-1, all motions, documents, or proposed orders shall be filed with proof of service on all relevant parties.

(f) *Hearing and Oral Argument Required.*

Except as provided in E.D.N.Y. LBR 2002-1, a hearing and oral argument is required on all calendar matters unless the Court directs that no hearing is required.

(g) *Motions to Avoid Liens.*

Motions seeking relief pursuant to Bankruptcy Code § 522(f) shall be supported by an affidavit or affirmation stating:

- (i) the date of filing of the bankruptcy petition;
- (ii) a description of the judgments to be avoided (*e.g.*, name of judgment holder, date and place of docketing of the judgment, amount of judgment);
- (iii) the amount of each lien on the property (including all mortgages); and

- (iv) the amount of the exemption claimed by the debtor.

Such motion shall also be supported by evidence showing the fair market value of the property as of the date of the filing of the bankruptcy petition; copies of tax assessments or a statement by a debtor or counsel regarding the value of the property are not sufficient. Copies of relevant documents must also be annexed as exhibits, including, *e.g.*, the lien search from the County Clerk's office and pay-off statements from the mortgage holders.

CROSS REFERENCES: E.D.N.Y. LBR 1002-1, 2002-2, 5005-1, 7007-1, 9006-1, 9023-1, 9077-1

REFERENCES: Bankruptcy Code § 522(f); Bankruptcy Rule 2002

Rule 9014-1 CONTESTED MATTERS

E.D.N.Y. LBR 7005-1, 7007-1, 7054-1, and 7056-1 shall apply in contested matters. Any reference to adversary proceedings in such rules shall be deemed for this purpose a reference to contested matters.

CROSS-REFERENCES: E.D.N.Y. LBR 7005-1, 7007-1, 7054-1, 7056-1

**Rule 9018-1 DOCUMENTS FILED UNDER SEAL ~~IN~~
~~ELECTRONIC CASES~~**

- (a) *Motion.*

A motion to file a document under seal (but not the document itself) shall be filed electronically. If the motion itself contains confidential information, the movant shall serve and file electronically a redacted version clearly marked as such, and submit an unredacted version for *in camera* review.

- (b) *Delivery of Sealed Documents.*

If the Court grants a motion to file a document under seal, in whole or in part, the movant shall deliver to the Clerk:

- (i) the documents to be filed under seal (the "sealed documents") and the proposed sealing order in an envelope clearly marked "Under Seal"; and
- (ii) an electronically stored document submitted in physical form -containing the sealed documents in "pdf" format and the proposed sealing order in a word processing format.

(c) *Destruction of Documents Filed Under Seal.*

Sealed documents shall be destroyed when the bankruptcy case is closed.

REFERENCE: General Order on Electronic Case Filing

Rule 9019-1 ALTERNATIVE DISPUTE RESOLUTION -- MEDIATION

(a) *Assignment of a Matter to Mediation.*

The Court may direct any dispute arising in any case or proceeding (collectively, “Matter”) to mediation *sua sponte* or upon the request of one or more party in interest. The Court may determine which parties in interest shall participate in the mediation. If a Matter is assigned to mediation, the parties shall comply with all applicable pleading, discovery, and other deadlines and scheduling requirements.

(b) *Appointment of a Mediator.*

The mediation participants shall select a mediator and at least one alternate from the Mediation Register of approved mediators kept by the Clerk within ~~10~~7 days of the entry of the order assigning the matter to mediation. If the mediation participants cannot agree within that time, or if the Court determines that selection of a mediator by the Court is appropriate, then the Court shall appoint a mediator. Within ~~10~~7 days of the selection of a mediator, the mediation participants and the mediator shall submit a proposed consent order appointing the mediator and describing the mediation procedures, including the terms of the mediator’s compensation and expense reimbursement (the “Mediation Order”). Procedures that are not set forth in the Mediation Order shall be governed by agreement of the parties, by this rule, or by the mediator.

The proposed Mediation Order shall be accompanied by a verified statement by the mediator stating that such person does not hold or represent an interest adverse to the estate, except as specifically disclosed therein, and that such person is disinterested.

(c) *Mediation Procedures.*

- (i) Unless the Court orders otherwise, the mediator and the mediation participants shall agree on the time and location for the initial mediation conference, which shall take place as soon as practicable after the entry of the Mediation Order, but no later than 30 days after the entry of the Mediation Order. The mediator may require the mediation participants to submit or exchange documents or information, including a mediation statement, before the initial mediation conference.

- (ii) Each mediation participant that is an individual shall attend the mediation conference in person. Each mediation participant that is a government entity shall attend in person by a representative who has, to the extent practicable, authority to settle the matter. All other mediation participants shall attend the mediation conference in person through a representative with authority to settle the matter. The mediator may permit telephonic or video participation in the mediation conference in appropriate circumstances.
 - (iii) The mediator shall determine the time and place for the mediation, including mediation conferences and caucuses between the mediator and a mediation participant, and the submission or exchange of documents or information. The mediator may not require a mediation participant who is represented by counsel to meet with the mediator without counsel present.
 - (iv) The mediator may set a deadline for the mediation participants to respond to a settlement proposal, including a settlement proposal by the mediator.
 - (v) Additional mediation procedures for the mediation may be agreed upon by the mediator and the mediation participants during the mediation process.
- (d) *Settlement Proposals by the Mediator.*

The mediator may, but shall not be required to, make a settlement proposal to the mediation participants. A settlement proposal by the mediator that is not accepted by the mediation participants shall not be disclosed to the Court.

- (e) *Failure to Comply with the Mediation Rule.*

If a mediation participant willfully fails to participate in good faith in the mediation process, then the mediator shall submit to the Clerk and serve on the mediation participants a report of the failure to participate. The report shall not be electronically filed, shall state on the first page at the top right corner that it is being submitted to the attention of the Clerk, and shall state that it is a report of a failure to mediate in good faith that should not be filed or given to the Judge. The report shall not be sent to the Judge presiding over the matter. The Clerk shall deliver the report to the Judge designated by the Chief Judge for mediation, who will take appropriate action, including holding a conference or hearing in person or telephone, and who may, in appropriate circumstances, impose sanctions.

(f) *Post-Mediation Procedures.*

- (i) If the mediation participants reach an agreement, then the mediator shall serve upon the parties and file electronically with the Court a report stating that the matter has been settled.
- (ii) If the mediation participants do not reach an agreement, and the mediator concludes that the mediation is at an impasse, then the mediator shall serve upon the parties and file with the Court a report stating that the mediation has reached an impasse and should be concluded.
- (iii) Upon the filing of the mediator's report, the mediation will be placed in suspense and the mediator will be excused from undertaking any further actions, unless otherwise requested by the mediation participants or directed by the Court.

(g) *Withdrawal from Mediation.*

At any time, the Court may withdraw a matter from mediation if the Court determines that the mediation referral is no longer appropriate. At any time, a party in interest, the United States trustee, or the mediator may request a conference with the Court or file a motion to withdraw a matter from mediation for cause.

(h) *Mediator Compensation.*

The mediator shall be compensated on terms that are satisfactory to the mediator and the mediation participants. The mediator's compensation shall be subject to Court approval if the estate is to pay any part of the expense. The mediator and the mediation participants shall set forth the terms of the mediator's compensation in the Mediation Order. Absent agreement or order to the contrary, the mediation participants shall pay equal shares of the mediator's compensation. If the mediator and the mediation participants cannot agree on compensation terms, the Court shall fix terms that are reasonable and just. The Court may also request the mediator serve *pro bono* or on a reduced fee basis.

(i) *Qualifications of the Mediator.*

The Clerk shall maintain a Mediation Register. Appointments to the Mediation Register shall be for 5-year terms. To qualify for appointment to the Mediation Register, a person must:

- (i) file an application in the form established by the Clerk;

- (ii) not have been suspended from a professional organization or have had a professional license revoked, not have pending any proceeding to suspend or revoke such license, not have resigned from any applicable professional organization while an investigation into allegations of misconduct which would warrant suspension, disbarment, or professional license revocation was pending; and not been convicted of a felony;
- (iii) not have been employed by the Court during the 36-month period preceding the date of such person's appointment to the Mediation Register; and
- (iv) meet the following minimum qualifications:
 - (A) For Lawyers Applying to be a Mediator: A lawyer must:
 - (1) be, or have been, a member in good standing of the New York State bar for at least 5 years;
 - (2) be admitted to practice in one of the district courts in the Second Circuit;
 - (3) have completed at least 12 hours of mediation training;
 - (4) be willing to undertake a minimum of 5 *pro bono* mediation assignments during the course of the 5-year term;
 - (5) file with the application original and current certificates of good standing from the department of the Supreme Court of New York Appellate Division in which he or she is admitted and from one of the district courts within the Second Circuit, or if retired, have been a

member in good standing in such courts; and

(6) be certified by the Chief Judge.

(B) For Other Professionals Applying to be a Mediator: A person must:

(1) be, or have been, authorized to practice for at least 5 years under the laws of the State of New York as a professional, including but not limited to, an accountant, real estate broker, appraiser, engineer, or other professional occupation;

(2) be an active member in good standing and submit to the Clerk proof of his or her professional status, or if retired, have been a member in good standing, of any applicable professional organization;

(3) have completed a mediation course or courses consisting of at least 12 hours of training;

(4) be willing to undertake a minimum of five *pro bono* mediation assignments during the course of the 5-year term; and

(5) be certified by the Chief Judge.

The Chief Judge may waive any of the requirements of this subdivision for good cause set forth in the application. Each person certified as a mediator shall take an oath or affirmation before his or her appointment to the Mediation Register.

(j) *Removal from the Mediation Register.*

A person may be removed from the Mediation Register at the person's request or by the Chief Judge.

(k) *The Mediation Register.*

The Clerk shall maintain the Mediation Register at the Court's Website and in the Clerk's office. The Mediation Register shall list the persons appointed to the Mediation Register, together with a brief biography and fee information supplied by the mediator to the Clerk. The Clerk shall also maintain for public inspection the applications filed by persons appointed to the Mediation Register.

(l) *Confidentiality.*

Any oral or written statements made by the mediator, the mediation participants, or others during the mediation process shall not be disclosed by any of the mediation participants, their agents, or the mediator, except that such statements may be disclosed to a Judge designated to hear a matter under subdivision (e) of this rule. Matters not to be disclosed include, without limitation:

- (i) views expressed or suggestions made by a participant with respect to a possible settlement of the dispute;
- (ii) whether a participant indicated a willingness to accept a proposal for settlement made by the mediator;
- (iii) proposals made or views expressed by the mediator;
- (iv) statements or admissions made by a participant; and
- (v) documents prepared for use in the mediation.

Records, reports, or other documents received by a mediator shall be confidential and shall not be provided to the Court except as required by subdivision (e) of this rule. The mediator shall not be compelled to testify or disclose any information concerning the mediation in any forum or proceeding, except as required by subdivision (e) of this rule. Unless the mediation participants and the mediator agree or the Court orders otherwise, 60 days after the mediator files a report under subdivision (f) of this rule, the mediator may discard the submissions made by the mediation participants and any other documents or information relating to the mediation.

Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other alternative dispute resolution procedure shall apply to statements and information that may not be disclosed pursuant to this rule.

Information otherwise discoverable or admissible in evidence shall not be immunized from discovery or inadmissible in evidence because it was disclosed in the mediation.

(m) *Immunity.*

The mediator shall be immune from claims arising out of acts or omissions arising from or relating to his or her service as a Court appointee, to the maximum extent allowed by law.

REFERENCE: Federal Rule of Evidence 408

Rule 9021-1 ENTRY OF ORDERS, JUDGMENTS AND DECREES

(a) *Entry.*

The Clerk shall enter all orders, decrees, and judgments of the Court in the Electronic Case Filing system which shall constitute docketing of the order, decree, or judgment for all purposes. The Clerk's notation in the appropriate docket of an order, judgment, or decree shall constitute the entry of the order, judgment, or decree.

(b) *Official Location.*

Each Court maintains a separate index of judgments signed by the Judges located at that site.

**Rule 9023-1 COSTS; NEW TRIALS;
MOTIONS FOR RECONSIDERATION**

(a) *Costs.*

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

(b) *Motions for Reconsideration.*

A motion for reconsideration of an order may be made pursuant to Bankruptcy Rule 9023.

Rule 9025-1 SURETIES

(a) *Execution by Surety Only.*

If a bond, undertaking, or stipulation is required, an instrument executed only by the surety shall be sufficient.

(b) *Security for Bond.*

Except as otherwise provided by law, every bond, undertaking, or stipulation referring to a bond shall be secured by:

- (i) the deposit of cash or government bonds in the amount of the bond, undertaking, or stipulation;
- (ii) the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury; or
- (iii) the undertaking or guaranty of two individual residents of the Eastern District or Southern District of New York, each of whom owns real or personal property within such district with an unencumbered value of twice the amount of the bond in excess of the surety's debts, liabilities, legal exemptions, and obligations on other bonds, guaranties, undertakings, or stipulations.

(c) *Affidavit by Individual Surety.*

In the case of a bond, undertaking, or stipulation executed by individual sureties, each surety shall attach an affidavit of justification, giving the surety's full name, occupation, and residence and business addresses, and showing that the surety is not disqualified from acting as an individual surety under subdivision (d) of this rule.

(d) *Persons Who May Not Act as Sureties.*

Members of the bar, administrative officers and employees of the Court, the marshal, and the marshal's deputies and assistants may not act as sureties in any pending case, adversary proceeding, or contested matter.

(e) *Approval of Bonds of Corporate Sureties.*

Except as otherwise provided by Bankruptcy Code §§ 303 and 322(b) and Bankruptcy Rule 2010, all bonds, undertakings, and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, may be approved by the Clerk when the amount of such bonds or undertakings has been fixed by Court order or statute.

CROSS-REFERENCE: E.D.N.Y. LBR 6005-1
REFERENCES: Bankruptcy Code §§ 303, 322(b); Bankruptcy Rule 2010

Rule 9028-1 UNAVAILABILITY OF A JUDGE

In the event of the unavailability of a Judge, any other Judge may act. To obtain the assistance of an available Judge, the parties shall communicate first with the chambers staff of the assigned Judge or, if chambers staff is unavailable, then with the Clerk.

**Rule 9036-1 CONSENT TO NOTICE BY
ELECTRONIC TRANSMISSION**

The receipt of an Electronic Case Filing password from the Court shall constitute consent to electronic notice by the attorney receiving the password pursuant to Bankruptcy Rule 9036, and shall constitute a waiver by such attorney of the right to receive notice by other, non-electronic means.

**Rule 9036-2 CONSENT TO SERVICE BY
ELECTRONIC TRANSMISSION**

(a) *Consent to Electronic Service.*

The receipt of an Electronic Case Filing password from the Court shall constitute consent to electronic service by the attorney receiving the password pursuant to Bankruptcy Rule 9036, and except as otherwise provided in subdivision (c) of this rule, constitutes a waiver by such attorney of the right to receive service by other, non-electronic means.

(b) *Service by Electronic Transmission.*

Whenever service is required to be made on a person who has consented to, or is deemed to have consented to, electronic service in accordance with Bankruptcy Rule 9036 or subdivision (a) of this rule, service shall be made by serving the “Notice of Electronic Filing” generated by the ECF system either by hand, facsimile, or e-mail, or by overnight mail if service by hand, facsimile, or e-mail is impracticable.

(c) *Exceptions to Electronic Service.*

Notwithstanding E.D.N.Y. LBR 9036-1 and subdivisions (a) and (b) of this rule, paper copies of documents or notices shall be served in the following circumstances:

- (i) Service made in accordance with Bankruptcy Rules 7004 and 9016; and
- (ii) Upon commencement of a case, service by counsel for the debtor of the petition, schedules, and statement of affairs on the United States trustee, all applicable governmental

agencies, and the trustee assigned to the case, when applicable.

(d) *Proof of Service.*

Proof of service under this rule as required by E.D.N.Y. LBR 9013-1(f), shall include a list of parties electronically served and the e-mail address where service was transmitted.

CROSS-REFERENCE: E.D.N.Y. LBR 2002-2, 9013-1
REFERENCE: General Order on Electronic Filing Procedures, Bankruptcy Rules 2002, 7004, 9016; Federal Rules of Civil Procedure 4, 45

Rule 9070-1 CUSTODY OF EXHIBITS

(a) *Retention by Attorney.*

In any trial or contested hearing in which exhibits are introduced, exhibits shall not be filed with the Clerk unless the Court orders such filing, but shall be retained by the attorney or party who offered them in Court. That attorney or party shall permit their inspection by any party for the purpose of preparing the record on appeal and shall be charged with the responsibility for their safekeeping and transportation to the appellate court.

(b) *Removal of Exhibits from Court.*

Exhibits that have been filed with the Clerk shall be removed by the party responsible for the exhibits:

- (i) if no appeal has been taken, at the expiration of the time for taking an appeal; or
- (ii) if an appeal has been taken, within 30 days after the record on appeal has been returned to the Clerk.

Parties failing to comply with this rule shall be notified by the Clerk to remove their exhibits, and, upon their failure to do so within 30 days of such notification, the Clerk may dispose of the exhibits at the expense of the party responsible.

CROSS-REFERENCE: E.D.N.Y. LBR 8007-1

**Rule 9072-1 SETTLEMENT OR SUBMISSION OF ORDER,
JUDGMENT OR DECREE**

(a) *Settlement of Order, Judgment or Decree.*

If, following a trial, hearing, or decision in an adversary proceeding or contested matter, the Court directs a party to settle an order, judgment, or decree, the party shall, within ~~15~~14 days of the Court's direction, or such other time period as the Court may direct, file its proposed order, judgment, or decree upon at least ~~5~~7 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. Counter-proposals of the proposed order, judgment, or decree shall be filed and served on at least ~~2~~3 days' notice. If the proposed or counter-proposed order, judgment, or decree is served by first-class mail, an additional 3 days shall be added to the minimum service requirement. If the proposed or counter-proposed order, judgment, or decree is served by overnight mail or courier, an additional day shall be added to the minimum service requirement.

(b) *Submission of Order, Judgment or Decree.*

If, following a trial, hearing or decision in an adversary proceeding or contested matter, the Court directs a party to submit an order, judgment, or decree, the party shall, within ~~15~~14 days of the Court's direction, file its proposed order, judgment, or decree.

(c) *Reference to Hearing Date.*

The proposed order, judgment, or decree and any counter-proposal shall refer to the hearing date to which the order applies.

(d) *Abandonment of Matter.*

If the order is not timely submitted or settled, the matter may be deemed abandoned.

**Rule 9077-1 ORDERS TO SHOW CAUSE; EX PARTE ORDERS;
ORDERS SHORTENING TIME**

(a) *Orders to Show Cause.*

An order to show cause shall be based on an affidavit or an affirmation showing reasons why proceeding other than by notice of motion is necessary. The affidavit or affirmation also shall state whether a previous application for similar relief has been made.

(b) *Ex Parte Orders.*

An *ex parte* request for an order shall be based on an affidavit or an affirmation showing cause for *ex parte* relief, and stating whether a previous application for similar relief has been made.

(c) *Orders Shortening Time.*

When expedited relief is thought necessary and the requirements for an order to show cause are not present and *ex parte* relief is not appropriate, the moving party may proceed by submitting a proposed order shortening time. A request for an order shortening time may be made *ex parte* and shall be supported by an affidavit or an affirmation showing cause for such expedited relief and stating whether a previous application for similar relief has been made.

REFERENCE: Bankruptcy Rule 9006

~~Committee Note: Former E.D.N.Y. LBR 9078-1 was redesignated E.D.N.Y. LBR 9013-1(f).~~