

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



Honorable Carla E. Craig, Chief Judge

Honorable Elizabeth S. Stong
Honorable Alan S. Trust
Honorable Robert E. Grossman
Honorable Nancy Hershey Lord
Honorable Louis A. Scarcella

Robert A. Gavin, Jr., Clerk of Court

Effective
[]

TABLE OF CONTENTS

PART I	COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF.....	1
Rule 1001-1	SHORT TITLE; APPLICABILITY	1
Rule 1002-1	FILING OF PETITION	2
Rule 1005-1	DEBTOR’S ADDRESS IN PETITION.....	3
Rule 1005-2	AMENDING CAPTION TO CORRECT DEBTOR’S NAME	4
Rule 1007-1	LIST OF CREDITORS.....	4
Rule 1007-2	EXEMPTIONS AND WAIVERS REGARDING CREDIT COUNSELING REQUIREMENT; WAIVER OF PERSONAL FINANCIAL MANAGEMENT COURSE	4
Rule 1007-3	MAILING MATRIX	5
Rule 1007-4	DEBTOR’S AFFIDAVIT TO BE FILED IN CHAPTER 11 CASES.....	6
Rule 1009-1	AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES AND STATEMENTS	8
Rule 1013-1	INVOLUNTARY PETITIONS	9
Rule 1017-1	[REPEALED]	10
Rule 1073-1	ASSIGNMENT OF CASES AND PROCEEDINGS	10
Rule 1073-2	DISCLOSURE OF RELATED CASES	10
Rule 1073-3	CORPORATE DISCLOSURE	12
Rule 1074-1	CORPORATE RESOLUTION; PARTNERSHIP STATEMENT	12
PART II	OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS.....	13
Rule 2002-1	NOTICES OF PRESENTMENT	13
Rule 2002-2	NOTICE TO GOVERNMENTAL AGENCIES	14
Rule 2003-1	MANDATORY DISCLOSURES IN CHAPTER 13 CASES.....	15
Rule 2004-1	ASSERTION OF CLAIM OF PRIVILEGE, UNIFORM DEFINITIONS IN DISCOVERY REQUESTS, AND COUNSEL FEES ON TAKING DEPOSITIONS MORE THAN 100 MILES FROM THE COURTHOUSE, IN RULE 2004 EXAMINATIONS	16
Rule 2014-1	EMPLOYMENT OF PROFESSIONAL PERSONS.....	17
Rule 2015-1	MONTHLY REPORTS IN ALL CHAPTER 11, 12 AND BUSINESS CHAPTER 13 CASES	18
Rule 2015-2	STORAGE OF BOOKS AND RECORDS	19
Rule 2016-1	COMPENSATION OF PROFESSIONALS	19
Rule 2016-2	FINAL COMPENSATION OR REIMBURSEMENT OF EXPENSES IN CHAPTER 7 CASES.....	19

Rule 2017-1	DESCRIPTION OF PRE-PETITION SERVICES OF DEBTOR’S COUNSEL IN CHAPTER 7 OR 13 CASES.....	20
Rule 2090-1	PRACTICE BEFORE THE COURT; WITHDRAWAL AS ATTORNEY OF RECORD; SUSPENSION.....	20
Rule 2090-2	APPEARANCE BY DEBTOR’S COUNSEL.....	22
PART III	CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS	24
Rule 3007-1	OBJECTIONS TO CLAIMS	24
Rule 3007-2	MODIFICATION OF SCHEDULES OF CLAIMS.....	24
Rule 3011-1	DISPOSITION OF UNCLAIMED FUNDS UNDER A CONFIRMED CHAPTER 11 PLAN.....	24
Rule 3015-1	CHAPTER 13 PLAN.....	25
Rule 3015-2	CHAPTER 13 PLAN MODIFICATION.....	26
Rule 3015-3	HEARING ON CONFIRMATION OF CHAPTER 13 PLAN	26
Rule 3016-1	OMISSION OF SEPARATE DISCLOSURE STATEMENT IN CHAPTER 11 SMALL BUSINESS CASES: DISCLAIMER.....	27
Rule 3017-1	PROPOSED DISCLOSURE STATEMENTS IN CHAPTER 9 AND 11 CASES: TRANSMITTAL AND DISCLAIMER.....	27
Rule 3018-1	SUMMARY AND CERTIFICATION OF ACCEPTANCE OR REJECTION OF PLANS IN CHAPTER 9 AND 11 CASES.....	28
Rule 3019-1	MODIFICATION OF CHAPTER 11 PLAN BEFORE CLOSE OF VOTING	29
Rule 3020-1	TIME FOR OBJECTING TO CONFIRMATION IN CHAPTER 9 AND 11 CASES; WITHDRAWAL OF OBJECTIONS.....	30
Rule 3020-2	CONFIRMATION ORDERS IN CHAPTER 9 AND 11 CASES	30
Rule 3021	POST-CONFIRMATION REQUIREMENTS IN CHAPTER 11 CASES.....	30
Rule 3022-1	FINAL DECREE	31
PART IV	THE DEBTOR: DUTIES AND BENEFITS	31
Rule 4001-1	RELIEF FROM AUTOMATIC STAY	31
Rule 4001-2	ORDERS CONFIRMING THE INAPPLICABILITY OF THE AUTOMATIC STAY	32
Rule 4001-3	ORDERS CONTINUING OR IMPOSING THE AUTOMATIC STAY.....	32
Rule 4001-4	PAYMENT AND CURE OF PRE-PETITION JUDGMENT OF POSSESSION INVOLVING RESIDENTIAL PROPERTY	32
Rule 4001-5	REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT	33
Rule 4002-1	DUTIES OF DEBTORS – PROCEDURES RELATING TO THE IMPLEMENTATION OF BANKRUPTCY CODE § 521.....	41
Rule 4003-1	AMENDMENT TO CLAIM OF EXEMPTIONS	43

Rule 4007-1	WITHDRAWAL OR SETTLEMENT OF PROCEEDINGS TO DETERMINE DISCHARGE AND DISCHARGEABILITY	43
Rule 4008-1	REAFFIRMATION AGREEMENTS	44
PART V	COURTS AND CLERKS.....	44
Rule 5001-1	CLERK’S OFFICE: CONTACT INFORMATION	44
Rule 5001-2	CLERK’S OFFICE: HOURS; AFTER HOURS FILING	44
Rule 5005-1	FILING BY ELECTRONIC MEANS	45
Rule 5010-1	REOPENING CASES	46
Rule 5011-1	WITHDRAWAL OF REFERENCE.....	47
Rule 5070-1	CALENDARS AND SCHEDULING	47
Rule 5073-1	CAMERAS, RADIO, RECORDERS AND OTHER ELECTRONIC DEVICES.....	48
Rule 5075-1	USE OF SERVICES AND AGENTS	48
Rule 5080-1	FEES – GENERAL.....	48
PART VI	COLLECTION AND LIQUIDATION OF THE ESTATE	48
Rule 6004-1	SALE OF PROPERTY, APPRAISALS AND AUCTIONS	48
Rule 6005-1	AUCTIONEERS.....	53
Rule 6006-1	EXECUTORY CONTRACTS AND UNEXPIRED LEASES	55
Rule 6007-1	ABANDONMENT OR DISPOSITION OF PROPERTY	56
PART VII	ADVERSARY PROCEEDINGS	56
Rule 7005-1	FILING OF DISCOVERY-RELATED DOCUMENTS	56
Rule 7007-1	DISCOVERY RELATED MOTIONS	57
Rule 7007.1-1	CORPORATE OWNERSHIP STATEMENT TO BE FILED BY A PARTNERSHIP OR JOINT VENTURE THAT IS A PARTY TO AN ADVERSARY PROCEEDING.....	57
Rule 7016-1	SUBMISSION OF MARKED PLEADINGS.....	58
Rule 7026-1	ASSERTION OF CLAIM OF PRIVILEGE AND UNIFORM DEFINITIONS IN DISCOVERY REQUESTS	58
Rule 7026-2	COOPERATION AMONG COUNSEL IN DISCOVERY	58
Rule 7030-1	COUNSEL FEES ON TAKING DEPOSITIONS MORE THAN 100 MILES FROM THE COURTHOUSE.....	59
Rule 7033-1	INTERROGATORIES	59
Rule 7034-1	OBJECTIONS TO, AND REQUESTS FOR RELIEF WITH RESPECT TO, PRODUCTION OF DOCUMENTS	61
Rule 7036-1	REQUESTS FOR ADMISSIONS	62
Rule 7052-1	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ...	62
Rule 7054-1	TAXABLE COSTS	62
Rule 7055-1	DEFAULT JUDGMENT.....	63
Rule 7056-1	SUMMARY JUDGMENT	63

PART VIII	APPEALS	63
Rule 8003-1	OPINION IN SUPPORT OF ORDER.....	63
Rule 8004-1	COPIES OF NOTICE OF APPEAL AND CERTIFICATION FOR DIRECT APPEAL TO CIRCUIT COURT	63
Rule 8009-1	RECORD ON APPEAL	64
Rule 8010-1	NOTICE TO THE COURT OF THE FILING OF A PRELIMINARY MOTION WITH AN APPELLATE COURT	65
Rule 8024-1	ORDER, JUDGMENT OR REMAND BY APPELLATE COURT	65
PART IX	GENERAL PROVISIONS.....	65
Rule 9001-1	DEFINITIONS.....	65
Rule 9004-1	PAPERS -- REQUIREMENTS OF FORM.....	67
Rule 9004-2	CAPTION -- PAPERS, GENERAL	67
Rule 9005.1-1	NOTICE OF CLAIM OF UNCONSTITUTIONALITY	68
Rule 9006-1	TIME FOR SERVICE AND FILING OF MOTIONS AND ANSWERING PAPERS.....	68
Rule 9011-1	SIGNING OF PAPERS	69
Rule 9013-1	MOTION PRACTICE	69
Rule 9014-1	CONTESTED MATTERS.....	71
Rule 9014-2	FIRST SCHEDULED HEARING	71
Rule 9018-1	DOCUMENTS FILED UNDER SEAL.....	72
Rule 9019-1	ALTERNATIVE DISPUTE RESOLUTION -- MEDIATION	73
Rule 9019-2	LOSS MITIGATION FOR INDIVIDUAL DEBTORS WITH RESIDENTIAL REAL PROPERTY AT RISK OF FORECLOSURE.....	79
Rule 9020-1	DEFAULT SANCTIONS; IMPOSITION OF COSTS	79
Rule 9021-1	ENTRY OF ORDERS, JUDGMENTS AND DECREES	79
Rule 9023-1	COSTS; NEW TRIALS; MOTIONS FOR RECONSIDERATION	80
Rule 9025-1	SURETIES	80
Rule 9028-1	UNAVAILABILITY OF A JUDGE.....	81
Rule 9036-1	CONSENT TO NOTICE BY ELECTRONIC TRANSMISSION	81
Rule 9036-2	CONSENT TO SERVICE BY ELECTRONIC TRANSMISSION	81
Rule 9037-1	REDACTION OF PERSONAL DATA IDENTIFIERS	83
Rule 9070-1	CUSTODY OF EXHIBITS	83
Rule 9072-1	SETTLEMENT OR SUBMISSION OF ORDER, JUDGMENT OR DECREE	84
Rule 9075-1	REQUEST FOR HEARING.....	85
Rule 9075-2	CERTIFICATE OF NO OBJECTION	85
Rule 9077-1	ORDERS TO SHOW CAUSE; <i>EX PARTE</i> ORDERS; ORDERS SHORTENING TIME	85

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

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

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 [___], 2019, shall apply to all cases and proceedings in this Court insofar as they are not inconsistent with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.
- (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.”
- (iii) In addition to these rules, procedures in the Court are also governed by individual chambers rules of Judges, which can be found on the Court’s Website.
- (iv) Failure to comply with the Federal Rules of Bankruptcy Procedure, these rules or individual chambers rules of Judges may result in denial of the relief requested, dismissal, or other sanctions. To the extent that an order in a specific case conflicts with these rules, the order in the case shall control.

(c) *References to Bankruptcy Code and Federal Rules of Bankruptcy Procedure.*

Unless otherwise stated, all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101, et seq., as amended, and to the Federal Rules of Bankruptcy Procedure, as applicable.

(d) *Modification or Suspension.*

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

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.

(d) *Individual Debtors.*

- (i) Any individual debtor who is not represented by an attorney (an "Unrepresented Debtor") seeking to file a petition shall provide an original photo identification of himself or herself at the time of filing. If the petition is a joint petition, photo identification for both debtors shall be provided.
- (ii) Any individual presenting a petition for filing on behalf of an Unrepresented Debtor shall provide an original

photo identification for the debtor or debtors named in the petition, and for himself or herself, at the time of filing.

- (iii) Where a petition is presented for filing by mail, it shall be accompanied by a copy of photo identification for the debtor or debtors named in the petition.
- (iv) Acceptable identification for the purposes of this rule includes a state driver's license, a U.S. passport, an identification card issued by a federal, state, or local governmental entity, military identification, a resident alien card, or a student identification card. Identification shall be current and legible, and shall include a photograph.
- (v) If an Unrepresented Debtor, or individual presenting a petition for filing on behalf of an Unrepresented Debtor, does not provide photo identification at the time the petition is presented for filing, the filer must sign a statement setting forth his or her name, address and telephone number and affirming that the filing of the petition is authorized. If a petition is filed without photo identification, photo identification shall be provided to the Clerk's Office for all of the debtors named in the petition within 14 days, or a motion for waiver of the requirement shall be made within that time.

(e) *Chapter 11 and Chapter 15 Debtors*

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

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

The petition shall state the debtor's residence or place of business, whichever is

applicable, 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 in accordance with Bankruptcy Rule 1007(a)(1) which sets forth the names of all creditors in alphabetical order (the "Creditor List"). The Creditor List shall also set forth the mailing address, zip code, and the specific amount of debt, if known, owed to each listed creditor. The Creditor List shall be provided to the United States trustee and such list shall also include the telephone number, email address and fax number of each creditor on the Creditor List, if known. 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) *Motion Pursuant To Bankruptcy Code § 109(h)(3)(B).*

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 that warrant the relief requested and should be supported by documentary evidence of the debtor's entitlement to the relief requested.

(b) *Motion Pursuant To Bankruptcy Code § 109(h)(4).*

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) 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) whether the debtor is a single asset real estate debtor within the meaning of Bankruptcy Code § 101(51B);
- (iii) the nature of the debtor's business and a concise statement of the circumstances leading to the debtor's filing under chapter 11;
- (iv) 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;
- (v) 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;
- (vi) with respect to each of the holders of the 20 largest general unsecured claims, excluding insiders and creditors holding priority claims: name, address (including the number, street, apartment or suite number, and zip code, if not included in the mailing address), telephone number, e-mail address, 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;

(vii) 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 mailing address), telephone number, e-mail 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;

(viii) a summary of the debtor's assets and liabilities or, in the alternative, a balance sheet reflecting the same;

(ix) 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;

(x) 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;

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

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

(xiii) 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;

(xiv) the names of the debtor's existing senior management, their tenure with the debtor, and a summary of their relevant responsibilities and experience;

(xv) 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;

(xvi) 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;

(xvii) an itemized 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;

(xviii) a schedule of the debtor's current insurance policies, including the identity of the insurer, policy period and type of insurance for each insurance policy listed;

(xix) a schedule of the debtor's bank accounts, including the name and address of the banking institution where the accounts are held, the name on the account, and the nature of the account for each bank account listed; and

(xx) such additional information as may be necessary to fully inform the Court of the debtor's rehabilitation prospects.

(b) *When to File.*

In a voluntary chapter 11 case, the affidavit shall accompany the petition. In an involuntary chapter 11 case, the affidavit shall be filed within 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 (ix) and (xviii) through (xix) 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 the Affidavit pursuant to Local Rule 1009-1(a), shall be served by the amending party upon:

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

If the amendment affects claimed exemptions, the amending party shall 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 shall 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 shall be filed.

CROSS-REFERENCES: E.D.N.Y. LBR 3007-2, 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 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 [REPEALED]

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 physical 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 the 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: The E.D.N.Y. LBR 1073-2 Statement is available at the Court's Website and at the intake counter of the Clerk's office.

Rule 1073-3 CORPORATE DISCLOSURE

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

(b) *Proposed Order.*

The proposed order shall be filed and served as an exhibit to the notice of presentment.

(c) *Time for Notice.*

A notice of presentment under subdivision (a) of this rule shall provide at least 21 days’ notice of the date set for the presentment of the proposed order if served in compliance with E.D.N.Y. LBR 9036-2(b). As set forth in E.D.N.Y. LBR 9006-1(c), (i) if papers are served by first-class mail, an additional 3 days shall be added to the

minimum service requirement and (ii) 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 order or who otherwise would be affected by the proposed order including, but not limited to, as applicable, contract counterparties, secured creditors, the debtor, any committee and any party that has filed a Notice of Appearance in the case.

(e) *Objection.*

Any objection to the proposed order shall be in writing, conform to the requirements set forth in E.D.N.Y. LBR 9013-1, and be served so as to be received by the proponent and filed with proof of service at least 7 days prior to the date set for the presentment of the proposed order.

CROSS-REFERENCES: E.D.N.Y. LBR 2002-2, 3015-2, 4001-1, 5070-1, 9013-1
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 United States trustee requests otherwise, any notice required to be given to all creditors or to an official committee of 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 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) *Required Documents Prior to First Meeting of Creditors.*

In all chapter 13 cases, the debtor shall provide the following documents to the trustee no later than 7 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 shall 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) *Required Documents Prior to Confirmation.*

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)

Rule 2004-1 ASSERTION OF CLAIM OF PRIVILEGE, UNIFORM DEFINITIONS IN DISCOVERY REQUESTS, AND

**COUNSEL FEES ON TAKING DEPOSITIONS MORE
THAN 100 MILES FROM THE COURTHOUSE, IN RULE
2004 EXAMINATIONS**

District Rules 26.2, 26.3 and 30.1 shall apply to requests for the production of documents under Bankruptcy Rule 2004.

REFERENCES: District Rules 26.2, 26.3 and 30.1.

Rule 2014-1 EMPLOYMENT OF PROFESSIONAL PERSONS

(a) *Requirements.*

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 compensation such as whether payment will be based on an hourly or monthly fee, contingent fee or fixed fee.;
- (ii) all compensation 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;
- (iii) all compensation paid within the 90 days prior to the bankruptcy filing and the specific source of such compensation;
- (iv) 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) *Verified Statement.*

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) *Additional Requirements for Chapter 11 Cases.*

In a chapter 11 case, in addition to the requirements set forth in Bankruptcy Rule

2014(a), the verified statement required to accompany an application for approval of the employment of an attorney under Bankruptcy Code §§ 327(a) or 1103 shall include a statement setting forth the attorney's qualifications and experience in handling chapter 11 cases to enable the evaluation of the attorney's competence.

(d) *Employment of Accountant or Financial Advisor.*

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 or financial advisor shall include a verified statement by an authorized representative of the accounting or financial advisory firm that sets forth:

- (i) whether or not the accountant or financial advisor is a certified public accountant; and
- (ii) in a chapter 11 case, the estimated cost of the accountant's or financial advisor's proposed services, the basis of such estimate and the extent to which the accountant or financial advisor is familiar with the books or accounts of the debtor.

(e) *Proposed Orders.*

All proposed orders and supporting documentation for employment of any professional shall be submitted to the United States trustee for review simultaneously with the filing.

CROSS-REFERENCE: E.D.N.Y. LBR 6005-1
REFERENCES: Bankruptcy Code §§ 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, a verified monthly operating report no later than the 20th day of each month, which shall be completed in the manner prescribed by the Operating Guidelines and Reporting Requirements of the United States Trustee, and in the case of a small business chapter 11 debtor, in accordance with Bankruptcy Code § 308. Failure to file required reports may constitute cause for dismissal or conversion of the case.

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

Rule 2015-2 STORAGE OF BOOKS AND RECORDS

The trustee or debtor in possession may place in storage, at the expense of the estate, the debtor's books, records, and papers. If stored, electronic records shall be stored in their original electronic formats. Non-electronic records may be converted and stored in electronic format.

Comment: This rule sets no time limit on the storage of books and records. On request, the Court may issue an appropriate order limiting storage of the debtor's books, records, and papers. Disposal of the debtor's books, records, and papers is governed by Bankruptcy Code §§ 363 and 554.

Rule 2016-1 COMPENSATION OF PROFESSIONALS

(a) A person seeking an award of compensation or reimbursement of expenses shall comply with any fee guidelines promulgated by the United States trustee and the Guidelines for Fees and Disbursements for Professionals in Eastern District of New York Bankruptcy Cases, which are available on the Court's website (http://www.nyeb.uscourts.gov/sites/nyeb/files/ord_613.pdf).

(b) A person seeking an order establishing procedures for monthly compensation and reimbursement of expenses for professionals shall comply with the Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals, which are available on the Court's website (<https://www.nyeb.uscourts.gov/professional-compensation-0>).

(c) A copy of the order authorizing the retention of the professional shall accompany all such applications. Unless otherwise directed by the Court, an appearance is not required for requests for awards of compensation or reimbursement of expenses of less than \$10,000.

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 21 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 7 days prior to the date of the hearing. Unless otherwise directed by the Court, an appearance is not required for requests for final awards of compensation or reimbursement of expenses

of less than \$10,000.

**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, e-mail address, and telephone number on every paper filed with the Court.

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

An attorney who has (i) filed a bankruptcy case on behalf of a debtor, (ii) been authorized to be retained or (iii) 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

(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. In all cases other than chapter 11 cases, an attorney who is knowledgeable in all aspects of the case may appear in place of the attorney of record. In a chapter 11 case, except in a case where the debtor retains conflicts counsel, the attorney of record for the debtor shall not exclude from the attorney's representation of the debtor any aspect of the debtor's case. In a case where the debtor retains conflicts counsel, the attorney of record for the debtor may only exclude those services delineated as services assigned to such conflicts counsel. In all cases other than chapter 11 cases, 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.*

In all cases other than chapter 11 cases, 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 any 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 14 days of service of the summons and complaint, file and serve on the debtor, the United States trustee 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 shall 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.

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

(a) *Distribution of Unclaimed Property Through Plan.*

A chapter 11 plan shall provide for the distribution of any unclaimed property that cannot be distributed pursuant to Bankruptcy Code § 347(b), including that any unclaimed property may be

- (i) Reallocated pursuant to the absolute priority rule;
- (ii) Reallocated for distribution pursuant to the plan's distribution scheme; or
- (iii) Donated to a not-for-profit, non-religious organization designated to receive unclaimed property.

(b) *Reallocation of Unclaimed Property If Not Otherwise Provided For.*

If a confirmed chapter 11 plan does not provide for the disposition of unclaimed property that cannot be distributed pursuant to Bankruptcy Code § 347(b), or such unclaimed property has not otherwise been disposed of pursuant to an order of the Court, such unclaimed property shall be reallocated for distribution pursuant to the plan's distribution scheme.

(c) *Donation of Unclaimed Property by Motion.*

If a confirmed chapter 11 plan does not provide for the disposition of unclaimed property that cannot be distributed pursuant to Bankruptcy Code § 347(b), or such unclaimed property has not otherwise been disposed of pursuant to an order of the Court, and all claims have been paid in full, then the Court may, after notice and a hearing, approve a motion by the plan administrator, or similar appointee, to donate any unclaimed property to an appropriate not-for-profit, non-religious organization

Rule 3015-1 CHAPTER 13 PLAN

(a) *Form of Plan.*

In a chapter 13 case, any plan that is filed shall conform to the E.D.N.Y. Form Chapter 13 Plan, available at (<https://www.nyeb.uscourts.gov/forms/chapter-13-plan>).

(b) *Service of Plan.*

Unless the plan is filed together with the petition, a chapter 13 debtor shall serve the chapter 13 plan on the trustee and all creditors within 7 days of filing the chapter 13 plan and at least 28 days before the confirmation hearing, and file proof of service thereof.

- (i) If, pursuant to section 3.7 of the chapter 13 plan, a chapter 13 debtor(s) elects to surrender the collateral securing a creditor's claim and requests that, upon confirmation of the chapter 13 plan the stay under Bankruptcy Code § 362(a) be terminated as to the collateral and that the stay under Bankruptcy Code § 1301 be terminated, the affected creditor(s) may request entry of an order confirming termination of the stay following the procedure set out in E.D.N.Y. LBR 4001-2; such request may not be made until the order confirming the Plan has become final.

(c) *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 chapter 13 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 chapter 13 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 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 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 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.

(d) *Disclosure Statement Disclaimer for Joint Approval of Disclosure Statement and Plan.*

Where the Court has authorized a joint hearing on approval of the disclosure statement and confirmation of the debtor's plan, but before final approval of a proposed disclosure statement has been given, the proposed disclosure statement shall have on its cover, in boldface type, the following language or words of similar import:

THE COURT HAS AUTHORIZED THE DEBTOR TO 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 7 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 concise 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.*

At least 7 days 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, the United States trustee and all parties that have filed a notice of appearance in the case. 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 7 days prior to the hearing on confirmation.

Rule 3019-1 MODIFICATION OF CHAPTER 11 PLAN BEFORE CLOSE OF VOTING

If the proponent of a chapter 11 plan files a modification of the plan after transmission of the approved disclosure statement and before the close of voting on the plan, the proponent shall serve a copy of the plan, as modified, upon the debtor, the trustee, each committee, the United States trustee, all entities directly affected by the proposed modification, and such other entities as the Court may direct. On notice to such entities, the Court shall determine whether the modification adversely affects the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted the modification in writing. If the Court determines that the modification is not adverse, the plan, as modified, shall be deemed accepted by all creditors and equity security holders who accepted the plan prior to modification. If the modification is adverse, the requirements of Bankruptcy Rule 3017 shall apply to the modified plan and any amendment of the disclosure statement necessitated by the modification.

REFERENCE: Bankruptcy Rule 3017
Comment: Pursuant to Bankruptcy Code § 1127(a), the proponent of a chapter 11 plan may modify the plan at any time before confirmation. While Bankruptcy Rule 3019 governs modification of a plan after acceptance and before confirmation, this rule governs modification subsequent to the transmission of an approved disclosure statement and before the close of voting.

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 in a chapter 9 or chapter 11 case shall be filed at least 7 days prior to the first date set for 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 file a concise statement stating the reason 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 copy of the confirmed plan shall be attached as an exhibit to the order confirming a chapter 9 or 11 plan or the confirmed plan must be identified in the confirmation order by docket number.

Rule 3021 **POST-CONFIRMATION REQUIREMENTS IN CHAPTER 11 CASES**

(a) *Timetable for Achieving Substantial Consummation.*

Within 14 days after the entry of an order confirming a chapter 11 plan, the plan proponent or other responsible person under the plan shall file on presentment in accordance with Local Bankruptcy Rule 2002-1 a proposed order that shall contain a timetable with the steps proposed for achieving substantial consummation of the plan and entry of a final decree, including resolution of claims and resolution of avoidance and other bankruptcy court litigation outstanding or contemplated. The law firms or individuals responsible for safeguarding and accounting for the proceeds of all recoveries on behalf of the estate shall be identified therein.

(b) *Reporting Requirements*

The plan proponent or responsible person under the plan shall file a report whenever necessary, but no less than every 6 months after the entry of the order issued in accordance with subdivision (a) of this rule, identifying the actions taken under the order, the location of and steps taken to protect any funds or other property recovered on behalf of the estate, and any necessary revisions to the timetable.

(c) *Requirements of Liquidating Plan*

A liquidating plan shall specify what steps the trustee shall take to monitor and ensure the safety of the trusts' assets and any requirement for a bond under the plan or confirmation order.

Rule 3022-1 FINAL DECREE

In a chapter 11 case, within 14 days following the full administration of the estate, but in any event not later than 18 months following the entry of the order confirming a plan, 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.

PART IV THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1 RELIEF FROM AUTOMATIC STAY

(a) *By Motion.*

If a motion for relief from the automatic stay under Bankruptcy Code § 362 is made returnable more than 30 days after the date filed, the movant shall be deemed to have consented to the continuation of the automatic stay through the hearing date.

(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.

(c) If the debtor is an individual, a motion for relief from the automatic stay under Bankruptcy Code § 362 shall be supported by an affidavit, based on personal knowledge, attesting to the circumstances of any default with respect to an obligation related to the motion.

(d) If the debtor is an individual, a party moving for relief from the automatic stay under Bankruptcy Code § 362 relating to a mortgage on real property or a security

interest in a cooperative apartment shall file, as an exhibit to the motion, a completed copy of the form available on the court's website (<https://www.nyeb.uscourts.gov/forms/relief-stay-real-estate-and-cooperative-apartments-72408-form-be-included-exhibit-motions>). Compliance with this subdivision shall constitute compliance with subdivision (c) of this rule.

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 documentary 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) make the required certification by completing Official Form 101A, Initial Statement About an Eviction Judgment Against You, including the landlord's name, address, telephone number and e-mail address;
- (ii) deliver to the Clerk, together with the petition (or, if the petition is filed electronically, 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) file a copy of the judgment for possession, if available; and
- (iv) if the landlord objects to the debtor's certification, attend the hearing on such objection.

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

(c) 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 REQUESTS FOR USE OF CASH COLLATERAL OR TO
OBTAIN CREDIT**

(a) *Contents of Financing 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. Failure to do so may result in such provisions being deemed denied by the Court. The requirements of Bankruptcy Rules 4001(b)(1)(B), (c)(1)(B) and (d)(1)(B) and this rule may be fulfilled through citation reference to the provisions of a filed copy of the relevant agreement. Defined terms shall either be defined in the motion or the motion shall include a specific reference to where the terms are defined in the filed copy

of the relevant agreement.

- (i) the amount of cash collateral the party seeks permission to use or the amount of credit the party seeks to obtain, including any committed amount or the existence of a borrowing base formula and the estimated availability under such formula;
- (ii) material conditions to closing and borrowing, including budget provisions;
- (iii) pricing and economic terms, including letter of credit fees, commitment fees, any other fees, and the treatment of costs and expenses of the lender(s), any agent for the lender(s), and their respective professionals;
- (iv) any effect on existing liens of the granting of collateral or adequate protection provided to the lender(s) and any priority or superpriority provisions;
- (v) any carve-outs from liens or superpriority claims;
- (vi) any cross-collateralization or other provision that elevates prepetition debt to administrative expense (or higher) status or that secures prepetition debt with liens on postpetition assets (which liens the creditor would not otherwise have by virtue of the prepetition security agreement or applicable law);
- (vii) any rollup or other provision that applies the proceeds of postpetition financing to pay, in whole or in part, prepetition debt or which otherwise has the effect of converting prepetition debt to postpetition debt;
- (viii) any provision that would limit the Court's power or discretion in a material way, or would interfere with the exercise of the fiduciary duties, or restrict the rights and powers, of the trustee, debtor in possession, or a committee appointed under Bankruptcy Code §§ 1102 or 1114, or any other fiduciary of the estate, in connection with the operation, financing, use or sale of the business or property of the estate, but excluding any agreement to repay postpetition financing in connection with a plan or to waive any right to incur liens that prime or are pari passu with liens granted under

Bankruptcy Code § 364;

- (ix) any limitation on the lender's obligation to fund certain activities of the trustee, the debtor in possession, or a committee appointed under Bankruptcy Code §§ 1102 or 1114;
- (x) any terms that provide that the use of cash collateral or the availability of credit will cease on (i) the filing of a challenge to the lender's prepetition lien or the lender's prepetition claim based on the lender's prepetition conduct; (ii) entry of an order granting relief from the automatic stay other than an order granting relief from the stay with respect to material assets; (iii) the grant of a change of venue with respect to the case or any adversary proceeding; (iv) management changes or the departure, from the debtor, of any identified employees; (v) the expiration of a specified time for filing a plan; or (vi) the making of a motion by a party in interest seeking any relief (as distinct from an order granting such relief);
- (xi) any change-of-control provisions;
- (xii) any provision establishing a deadline for, or otherwise requiring, the sale of property of the estate;
- (xiii) any prepayment penalty, termination fee or other provision that affects the debtor's right or ability to repay the financing in full during the course of the chapter 11 case;
- (xiv) in jointly administered cases, terms that govern the joint liability of the debtors, including any provisions that would govern the nature and/or priority, if any, of any interdebtor claims that would result if a debtor were to repay debt incurred by or for the benefit of another debtor;
- (xv) any provision for the funding of non-debtor affiliates with cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding; and
- (xvi) provisions that require the debtor to pay an agent's or lender'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, the committee appointed under Bankruptcy Code § 1102 (if formed), or, upon objection by either of the foregoing parties, the Court.

(b) *Disclosure of Efforts to Obtain Financing and Good Faith.*

A Financing Motion seeking authority to obtain credit shall describe in general terms the efforts of the trustee or debtor in possession to obtain financing, the basis on which the trustee or the debtor determined that the proposed financing is on the best terms available and material facts bearing on the issue of whether the extension of credit is being extended in good faith.

(c) *Enforcement and Remedies.*

- (i) If a proposed order contains a provision that modifies or terminates the automatic stay or permits the lender to enforce remedies upon the occurrence of a default or event of default, the proposed order shall require at least 7 days' notice to the trustee or debtor in possession, the United States trustee and each committee appointed under Bankruptcy Code §§ 1102 or 1114 (or the 20 largest unsecured creditors of the debtor as listed on the debtor's schedules if no committee has been appointed under Bankruptcy Code § 1102(a)(1)), before the modification or termination of the automatic stay or the enforcement of the lender's remedies. If less notice is provided, the Financing Motion shall explain why.
- (ii) If a proposed order contains a provision that terminates the use of cash collateral, the proposed order shall require at least 5 days' notice before the use of cash collateral ceases (provided that the use of cash collateral conforms to any budget in effect). If less notice is provided, the Financing Motion shall explain why.

(d) *Carve-Outs.*

- (i) Any provision in a Financing Motion or proposed order relating to a carve-out from liens or superpriority claims shall disclose when the carve-out takes effect, whether it remains unaltered after payment of interim fees made before an event of default, and any effect of the carve-out on any borrowing base or borrowing availability under the postpetition loan. If a provision relating to a carve-out provides disparate treatment for the professionals retained by a committee appointed under Bankruptcy Code §§ 1102 or 1114, when compared with the treatment for professionals retained by the trustee or debtor in possession, or if the carve-out does not

include reasonable expenses of committee members (excluding fees and expenses of professionals employed by such committee members individually), reasonable post-conversion commissions, fees and expenses of a chapter 7 trustee, fees payable to the Court and the United States trustee (together with any accrued interest), or the costs of investigating whether any claims or causes of action against the lender(s) exists or whether a secured creditor's lien is valid and/or properly perfected, there shall be disclosure thereof under subdivision (a) of this rule, and the Financing Motion shall contain a detailed explanation of the reasons therefor.

(e) *Investigation Periods Relating to Waivers and Concessions as to Prepetition Debt.*

If a Financing Motion seeks entry of an order in which the trustee or debtor in possession stipulates, acknowledges or otherwise admits to the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim, such stipulations, acknowledgements or admissions shall not be listed as factual findings by the Court. If such stipulations, acknowledgements or admissions are included in the proposed order, either the proposed order shall include a provision that permits the investigation and proceedings relating to such determination by parties other than the trustee or debtor in possession as follows, or the Financing Motion shall explain why the proposed order does not contain such a provision:

- (i) the committee of unsecured creditors appointed under Bankruptcy Code § 1102 shall have at least 60 days from the date of entry of the final order authorizing the use of cash collateral or the obtaining of credit (or such longer period as the Court orders for cause shown before the expiration of such period) to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate;
- (ii) if no such committee has been appointed, any party in interest (other than the Debtor) shall have at least 75 days (or such longer period as the Court orders for cause shown before the expiration of such period) from the entry of the final financing order to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate; *provided* that the foregoing period may be shortened for cause shown, including in prepackaged or prearranged cases; and
- (iii) upon conversion of a chapter 11 case to chapter 7, to the extent that any period to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate has not expired, such period shall automatically be extended for 75 days from the date a chapter 7 trustee is appointed.

(f) *Interim Relief.*

- (i) A single Financing Motion may be filed seeking entry of an emergency or interim order and a final order, which orders would be normally entered at the conclusion of the preliminary hearing and the final hearing, respectively, as those terms are used in Bankruptcy Rules 4001(b)(2) and (c)(2).
- (ii) When a Financing Motion is 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 limited to the relief necessary to avoid immediate and irreparable harm to the estate pending the final hearing. A Financing Motion that seeks entry of an emergency or interim order before a final hearing under Bankruptcy Rule 4001(b)(2) or (c)(2) shall describe the amount and purpose of funds sought to be used or borrowed on an emergency or interim basis and shall set forth facts to support a finding that immediate or irreparable harm will be caused to the estate if immediate relief is not granted before the final hearing.

(g) *Adequacy of Budget.*

If the trustee or debtor in possession will be subject to a budget under a proposed cash collateral or financing order or agreement, the Financing Motion shall include a statement by the trustee or debtor stating whether it has reason to believe that the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget.

(h) *Notice.*

Notice of a preliminary or final hearing shall be given to the United States trustee, the debtor's 20 largest unsecured creditors or the creditors' committee if one has been appointed, the persons required by Bankruptcy Rules 4001(b)(3) and 4001(c)(3), as the case may be, and any other persons whose interests may be directly affected by the outcome of the Financing Motion or any provision of the proposed order.

(i) *Presence at Hearing.*

Unless the Court directs otherwise,

- (i) counsel for each proposed lender, or for an agent representing such lender, shall be present at all preliminary and final hearings on the authority to obtain credit from such lender, and counsel for each entity, or for an agent of such entity, with an interest in cash collateral to be used with the entity's consent shall be present at all preliminary and final hearings on the authority to use such cash collateral; and

- (ii) a business representative of the trustee or debtor in possession, the proposed lender or an agent representing such lender, and any party objecting to the Financing Motion for authority to obtain credit, each with appropriate authority, shall be present at, or available by telephone for, all preliminary and final hearings for the purpose of making necessary decisions with respect to the proposed financing.
- (j) *Provisions of the Proposed Order.*
- (i) *Jurisdiction.* The proposed order shall identify the basis for the Court's jurisdiction over the matter.
 - (ii) *Findings of Fact.*
 - (A) A proposed order approving the use of cash collateral under Bankruptcy Code § 363(c), or granting authority to obtain credit under Bankruptcy Code § 364, shall limit the recitation of findings to facts essential to entry of the order, including the facts required under Bankruptcy Code § 364 regarding efforts to obtain financing on a less onerous basis and (where required) facts sufficient to support a finding of good faith under Bankruptcy Code § 364(e).
 - (B) A proposed emergency or interim order shall include a finding that immediate and irreparable loss or damage will be caused to the estate if immediate financing is not obtained and should state with respect to notice only that the hearing was held pursuant to Bankruptcy Rule 4001(b)(2) or (c)(2), the parties to which notice was given, the manner of notice and that the notice was, in the trustee's or debtor in possession's belief, the best available under the circumstances.
 - (C) A proposed final order may include factual findings as to notice and the adequacy thereof.
 - (D) To the extent that a proposed order incorporates by reference to, or refers to a specific section of, a prepetition or postpetition loan agreement or other document, the proposed order shall also include a summary of the material provisions of that section.
 - (iii) *Mandatory Provisions.*

The proposed order shall contain all applicable provisions included in the enumerated lists of material provisions set forth in Bankruptcy Rule 4001(b)(1)(B), (c)(1)(B), and (d)(1)(B), as supplemented by subdivision (a) of this rule.

(iv) *Cross-Collateralization and Rollups.*

A proposed order approving cross-collateralization or a rollup shall include language that reserves the right of the Court, after notice and hearing, to unwind or partially unwind the postpetition protection provided to the prepetition lender or the paydown of the prepetition debt, whichever is applicable, in the event that there is a timely and successful challenge to the validity, enforceability, extent, perfection or priority of the prepetition lender's claims or liens, or a determination that the prepetition debt was undersecured as of the petition date, and the cross-collateralization or rollup improperly advantaged the lender.

(v) *Waivers, Consents or Amendments with Respect to the Loan Agreement.*

A proposed order may permit the parties to enter into waivers or consents with respect to the loan agreement or amendments thereof without the need for further Court approval, provided that (i) the agreement as so modified is not materially different from that approved, (ii) notice of all amendments is filed with the Court, and (iii) notice of all amendments (other than those that are ministerial or technical and do not adversely affect the estate) is provided in advance to counsel for any committee appointed under Bankruptcy Code §§ 1102 or 1114, all parties requesting specific notice and the United States trustee.

(vi) *Conclusions of Law.*

- (A) A proposed order may provide that the trustee or debtor in possession is authorized to enter into the loan or other agreement, but it shall not state that the Court has examined and approved the loan or other agreement.
- (B) A proposed final order may contain conclusions of law with respect to the adequacy of notice under Bankruptcy Code § 364 and Bankruptcy Rule 4001.

(vii) *Order to Control.*

A proposed order shall state that to the extent that a loan or other agreement differs from the order, the order shall control.

(viii) *Statutory Provisions Affected.*

A proposed order shall specify those provisions of the Bankruptcy Code, Bankruptcy Rules and/or Local Rules relied upon as authority for granting relief, and shall identify those sections that are, to the extent permitted by law, being limited or abridged.

(ix) *Limitations on Interim Relief.*

Unless expressly and separately addressed by the Court, an interim order approving use of cash collateral or obtaining credit may not contain, and any application requesting such provisions in an interim order shall be deemed denied, with respect to any provisions waiving any rights under Bankruptcy Code § 506(c), the doctrine of marshalling, a lien on or recovery of proceeds of any avoidance action or the equities of the case doctrine under Bankruptcy Code § 552(b).

REFERENCES: Bankruptcy Code §§ 363 and 364
Committee Note: 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 DUTIES OF DEBTORS – PROCEDURES RELATING TO THE IMPLEMENTATION OF BANKRUPTCY CODE § 521

(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 or loan 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 subdivision (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; 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

(a) *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 by the debtor or dependent of the debtor and served on the trustee, the United States trustee and all creditors. An amendment shall not be effective until proof of service is filed, which shall be done within 7 days of service.

(b) *Automatic Extension of Time to File Objections to Claim of Exemptions In Event of Amendment to Schedules to Add a Creditor.*

If the schedules are amended to add a creditor, and the amendment is filed and served either (i) fewer than 30 days prior to the expiration of the time set forth in Bankruptcy Rule 4003(b) for the filing of objections to the list of property claimed as exempt, or (ii) at any time after such filing deadline, the added creditor shall have 30 days from the date of service of the amendment to file an objection to the list of property claimed as exempt.

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

Rule 4007-1 WITHDRAWAL OR SETTLEMENT OF PROCEEDINGS TO DETERMINE DISCHARGE AND DISCHARGEABILITY

(a) *Withdrawal of Complaint.* In the event of the withdrawal of a complaint objecting to discharge or failure to prosecute an adversary proceeding objecting to discharge, no discharge shall be granted unless the debtor shall make and file an affidavit and the debtor's attorney shall make and file a certification that no consideration has been promised or given, directly or indirectly, for the withdrawal or failure to prosecute.

(b) *Settlement of Proceedings.* 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)

Rule 4008-1 REAFFIRMATION AGREEMENTS

Any agreement between the debtor and a creditor to repay a debt pursuant to 11 U.S.C. § 524(c) shall be filed using Procedural Form B240A, which can be found at (http://www.uscourts.gov/sites/default/files/form_b2400a.pdf.)

REFERENCE: Bankruptcy Code § 524(c)

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
Central Islip, New York 11722

(b) *Physical Addresses and Phone Numbers.*

Brooklyn Office:

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

Central Islip Office:

United States Bankruptcy Court
Alphonse M. D'Amato
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

Unless otherwise posted on the Court's website, 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 and court holidays, and shall be closed on Saturdays and Sundays. When the Clerk's office is closed, papers not filed electronically relating to cases pending in Brooklyn may

be filed by depositing them in the 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 not filed electronically relating to cases pending in Central Islip may be filed by depositing them in the night depository located in the courthouse lobby of the Alfonse M. D'Amato 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 filed by depositing them in the 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. Any required fees for such filings shall be delivered to the Clerk's office no later than noon on the next business day.

Persons may review records, request files for review, review docket, request docket 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 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, except documents to be placed under seal in accordance with E.D.N.Y. LBR 9018, shall be filed by electronic means. 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.
- (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 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 Clerk. An original and three (3) copies of the District Court Civil Cover Letter Sheet shall be submitted to the Court. The Clerk will transmit the motion and supporting documents to the District Court. The movant shall obtain from the Clerk the District Court civil case number and name of the District Judge assigned to the motion and shall be responsible for notifying all other parties. Following the transmittal of the motion and supporting documents, 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 Public or Private Sale.*

A trustee seeking to sell property of the estate outside the ordinary course of business must give the notice required by Bankruptcy Rule 2002(a)(2) and, if applicable, Bankruptcy Rule 6004(g); provided that a trustee may seek an order by notice of presentment under E.D.N.Y. LBR 2002-1(a) to sell property of the estate that the trustee reasonably believes has an aggregate gross value of no more than \$10,000 by public or

private sale on 7 days' written notice to the United States trustee, any party with an interest in such property, the landlord of the premises at which the property is located, all parties who have filed notices of appearance, and such other notice as the Court may direct.

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) whether the sale will be public or private;
 - (v) the place, date, and time of the sale;
 - (vi) the place, date, and time the property may be examined prior to the sale;
 - (vii) the date by which objections to the sale must be filed with the Court;
 - (viii) the date of the hearing to consider any objections to the sale; and
 - (ix) 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, or if the joint sale of property in more than one (1) bankruptcy estate is anticipated to be more cost-effective or beneficial for all the bankruptcy estates, the Court may enter an order fixing the method of allocating the buyer’s premiums, commissions and expenses of sale.

- (i) The trustee may participate in a joint sale with a non-debtor, provided it is in the best interest of the debtor’s estate and its creditors.
- (ii) The buyer’s premiums, commissions and expenses incurred on behalf of one (1) bankruptcy estate in a joint auction sale shall not be charged to any other estate unless the motion requesting the joint auction discloses the identity and number of any other estate participants in the joint auction sale, and how such buyer’s premiums, commissions and expenses shall be apportioned among them.

(e) *Proceeds of Auction.*

- (i) 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 7 days after the proceeds are received.

(f) *Report of Auction.*

Within 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 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, buyer's premiums 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) that 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, including with respect to real property, the approximate acreage of any real estate outside the limits of any town, village or city, and the street, lot, and block number of any real estate within any town, village or city, and a general statement of the character of any improvements upon the property;
- (iii) the terms and conditions of the sale; and
- (iv) the name, address, and telephone number of the 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.

(j) *Compliance with Sale Guidelines.*

Except as otherwise provided by this rule, in addition to the foregoing requirements, parties conducting a sale of property of the estate, including trustees and auctioneers, must comply with the Sale Guidelines by the Court, which shall be available on the Court's Website [PROVIDE LINK].

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

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 shall be allowed to receive buyer's premiums, commissions and reimbursement of expenses for sales of property, subject to Court approval, in an amount not to exceed:

- (i) buyer's premiums and/or commissions on each sale conducted by the auctioneer at the following rates in the aggregate:
 - (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 Buyer's Premiums, Commissions and Reimbursement of Expenses.*

An auctioneer shall file an application with the Clerk for approval of buyer's premiums, commissions and reimbursement of expenses on not less than 7 days' notice to the debtor, the trustee, the United States trustee, and each committee appointed under Bankruptcy Code §§ 1102 or 1114. An application shall 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. An appearance is not required for requests of buyer's premiums, commissions and reimbursement of expenses of less than \$10,000.

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

Rule 6006-1 EXECUTORY CONTRACTS AND UNEXPIRED LEASES

(a) *Motion to Assume Executory Contract or Unexpired Lease in Chapter 7 Case.*

In a chapter 7 case, a trustee moving to assume an executory contract or unexpired lease of residential real property or personal property of the debtor shall seek to obtain a return date for the hearing on the motion that is within 60 days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the trustee files a motion to assume or to extend the time to assume or reject an executory contract or unexpired lease of residential real property or personal property, and the motion is filed prior to the expiration of the time to assume or reject such executory contract or unexpired lease with a return date no later than 14 days from the date of the expiration of the time to assume or reject such executory contract or unexpired lease, the trustee shall file with its motion a proposed order seeking an extension for cause under § 365(d)(1) of the time to assume or reject the executory contract or unexpired lease to the date of the hearing on the motion, which order may be entered without further notice or a hearing.

(b) *Motion to Assume Unexpired Lease of Nonresidential Real Property.*

In a case under any chapter, a debtor, debtor in possession, or trustee moving to assume an unexpired lease of nonresidential real property under which the debtor is the lessee shall seek to obtain a return date for the hearing on the motion that is within 120 days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the debtor, debtor in possession, or trustee files a motion to assume or to extend the time to assume or reject an unexpired lease of nonresidential real property, and the motion is filed prior to the expiration of the time to assume or reject the unexpired lease with a return date no later than 14 days from the date of the expiration of the time to assume or reject such lease, the debtor, debtor in possession, or trustee shall file with its motion a proposed order seeking an extension for cause under § 365(d)(4)(B)(i) of the time to assume or reject the unexpired lease to the

date of the hearing on the motion, which order may be entered without further notice or a hearing, except that the time for the debtor, debtor in possession, or trustee to assume or reject such unexpired lease shall not be extended beyond the date that is 210 days after the entry of the order for relief without the prior written consent of the landlord.

REFERENCES: Bankruptcy Code §§ 365(d)(1), 365(d)(4)(B)(i)
Comment: Bankruptcy Code § 365(d)(1) contemplates that a hearing on a motion by a chapter 7 trustee to assume an executory contract or unexpired lease of residential real property or personal property of the debtor ordinarily will take place within 60 days from the date of the order for relief. Likewise, Bankruptcy Code § 365(d)(4) contemplates that a final hearing on a motion by a debtor, debtor in possession, or trustee to assume an unexpired lease of nonresidential real property of the debtor ordinarily will take place within 60 days from the date of the order for relief.

Under Bankruptcy Code § 365(d)(1), in a chapter 7 case, the Court may, for cause, extend the 60-day time period for assuming or rejecting an executory contract or unexpired lease of residential real property or personal property. Similarly, under § 365(d)(4), the Court may, for cause, extend the 120-day time period for assuming or rejecting an unexpired lease of nonresidential real property. Adequate cause for an extension of time to assume or reject the executory contract or unexpired lease until the Court rules on the motion exists by virtue of the fact that a motion to assume or to extend the time was filed in a timely manner. Any party in interest objecting to the extension of time may request a hearing on an expedited basis. To prevent abuse of the automatic extension, the return date of the motion must be no later than 14 days after the expiration of the period.

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, and, in the case of abandonment, identify the entity to whom the property is proposed to be abandoned.

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.

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.

No discovery-related motion under Bankruptcy Rules 7026 through 7037 shall be filed unless counsel for the moving party first requests a conference with the Court and either (i) the request has been denied, or (ii) the discovery dispute has not been resolved as a consequence of the conference.

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

REFERENCES: Bankruptcy Rules 7026, 7037

Rule 7007.1-1 CORPORATE OWNERSHIP STATEMENT TO BE FILED BY A PARTNERSHIP OR JOINT VENTURE THAT IS A PARTY TO AN ADVERSARY PROCEEDING

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

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

Rule 7012-1 EXTENSION OF TIME TO PLEAD OR FILE MOTION

The deadline to plead or move in response to a complaint or other pleading in an adversary proceeding may be extended for a period of up to 30 days by stipulation of the parties docketed with the Court or, for a longer period of time, by order of the Court or further stipulation of the parties that has been so-ordered by the Court. Any motion for extension of time to plead or move in response to a complaint or other pleading in an adversary proceeding or a stipulation seeking entry of an order approving such extension shall be filed with the Court prior to the expiration of the deadline to be extended. Any deadline extended pursuant to this rule shall not affect any other deadlines set forth in any scheduling order entered by the Court.

Rule 7016-1 SUBMISSION OF MARKED PLEADINGS

Marked pleadings are not required.

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

Rule 7026-1 ASSERTION OF CLAIM OF PRIVILEGE AND UNIFORM DEFINITIONS IN DISCOVERY REQUESTS

District Rules 26.2 and 26.3 shall apply to discovery requests made in cases and proceedings commenced under the Bankruptcy Code.

REFERENCES: District Rules 26.2 and 26.3

Rule 7026-2 COOPERATION AMONG COUNSEL IN DISCOVERY

(a) Counsel are expected to cooperate with each other, consistent with the interests of their clients, in all phases of the discovery process and to be courteous in their dealings with each other, including in matters relating to scheduling and timing of various discovery procedures.

(b) Discovery requests shall be read reasonably in the recognition that the attorney serving them generally does not have the information being sought and the attorney receiving them generally does have such information or can obtain it from the client.

Comment: This rule is an adaptation of District Rule 26.4.

Rule 7030-1

COUNSEL FEES ON TAKING DEPOSITIONS MORE THAN 100 MILES FROM THE COURTHOUSE

District Rule 30.1 shall apply when a deposition upon oral examination is to be taken at a place more than one hundred (100) miles from the courthouse.

Comment: This rule is an adaptation of District Rule 30.1.

Rule 7033-1

INTERROGATORIES

(a) *Restrictions.*

At the commencement of discovery, interrogatories will be restricted to those questions seeking names of witnesses with knowledge or information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location, and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, and information of a similar nature.

(b) *Method of Obtaining Information.*

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

(c) *What May Be Served.*

At the conclusion of each party's discovery, and at least 30 days prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served. Questions seeking the names of expert witnesses and the substance of their opinions also may be served if such information has not yet been supplied.

(d) *No Interrogatories to Be Unanswered.*

No part of an interrogatory may be left unanswered merely because an objection is interposed to another part of the interrogatory.

(e) *Objections or Requests for Relief.*

- (1) In connection with any objection or request for relief with respect to interrogatories or answers to interrogatories, the party making the objection or request for relief shall (i) simultaneously with the filing of a request or moving papers, file a copy of the interrogatories or answers to interrogatories and (ii) specify and quote verbatim in the request or moving papers each relevant interrogatory or answer and, immediately following each specification, set forth the basis of the objection or relief requested.
- (2) If an objection or request for relief is made with respect to any interrogatory or portion thereof, the objection shall state all grounds with specificity. Any ground not stated in the objection or request for relief within the time provided by the Bankruptcy Rules, or any extensions thereof, shall be deemed waived.
- (3) If a claim of privilege is asserted in an objection or request for relief with respect to any interrogatory or portion thereof, and an answer is not provided on the basis of the assertion, the objection or request for relief shall identify:
- (A) the nature of the privilege being claimed and, if the privilege is being asserted in connection with a claim or defense governed by state law, the state's privilege rule being invoked; and
 - (B) unless divulgence of such information would cause disclosure of the allegedly privileged information:
 - 1. for documents: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author to the addressee and the names of all entities that received a copy of the document.
 - 2. for oral communications: (i) the name of the person making the communication, the names of any persons present while the communication was made, and, where not apparent, the relationship of the persons present to the person making the communication; (ii) the date and place of the communication; and (iii) the general subject matter of the communication.

(f) Reference to Records.

If a party answers an interrogatory by reference to records from which the answer may be derived or ascertained, as permitted by Bankruptcy Rule 7033:

- (1) the specification of documents to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and ascertain the answer as readily as could the party from whom discovery is sought;
- (2) the producing party shall also make available any computerized information or summaries thereof that it has, or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery;
- (3) the producing party shall also provide any relevant compilations, abstracts, or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery; and
- (4) the documents shall be made available for inspection and copying within 14 days after service of the answers to interrogatories or on a date agreed upon by the parties.

REFERENCES: Federal Rule of Civil Procedure 26(a)(1)
Comment: This rule is an adaptation of District Rules 33.3 and 37.1, with the exception of subdivision (e)(1) of this rule.

The initial disclosures required under Federal Rule of Civil Procedure 26(a)(1) must be made in adversary proceedings. Because information previously sought by interrogatories will frequently have been obtained by those initial disclosures, subdivision (a) of this rule has been amended accordingly.

Rule 7034-1 OBJECTIONS TO, AND REQUESTS FOR RELIEF WITH RESPECT TO, PRODUCTION OF DOCUMENTS

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

(b) If an objection or request for relief is made with respect to any document request or portion thereof, the objection or request for relief shall state all grounds with specificity. Any ground not stated in the objection or request for relief within the time provided by the Bankruptcy Rules, or any extensions thereof, shall be deemed waived.

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

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

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

Rule 7036-1 REQUESTS FOR ADMISSIONS

In connection with any objection to a request for admission, the objecting party shall (i) specify and quote verbatim in the objection each request to which the objection is made and (ii) immediately following each specification, set forth the basis of the objection.

Comment: This rule is an adaptation of District Rule 37.1.

Rule 7052-1 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, on notice to all parties, may require one or more parties to submit proposed findings of fact and conclusions of law. Any party submitting proposed findings of fact and conclusions of law shall serve them on all other parties within the time fixed by the Court. The Court may also grant any party's request to submit counter-findings and conclusions, which shall be served on all other parties within the time fixed by the Court.

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 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) No party shall file a motion for summary judgment without first seeking a pre-motion conference. The request for a pre-motion conference shall be made by letter, filed with the Court, on the docket of the case, served on all other parties, and shall set forth the issues to be presented in the motion and the grounds for relief. The letter shall not exceed two (2) pages in length.

(b) Any other party may file a responsive letter, in the same manner and subject to the same limitations, within two (2) business days of filing of the request for a pre-motion conference. The Court may grant or deny the request for a pre-motion conference in its discretion. To the extent that the request for a pre-motion conference is denied, the party may proceed with filing the motion.

(c) 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(c).

REFERENCE: Federal Rule of Civil Procedure 56(c)

PART VIII APPEALS

Rule 8003-1 OPINION IN SUPPORT OF ORDER

[ABROGATED]

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

[ABROGATED]

Rule 8007-1 SUPERSEDEAS BOND

(a) A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment, plus interest at a rate consistent with 28 U.S.C. § 1961, and \$250 to cover costs and such damages for delay as may be awarded. The parties may waive the supersedeas bond by stipulation.

(b) When the stay may be effected as of right solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the Court, on notice, shall fix the amount of the bond. In all other cases, the Court may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.

(c) On approval by the Court, a supersedeas bond shall be filed with the Clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. If the appellee objects to the form of the bond or to the sufficiency of the surety, the Court shall hold a hearing on notice to all parties.

Rule 8009-1 RECORD ON APPEAL

(a) *Designation of Items.*

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 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, except for a request for a stay pending appeal, which shall be filed in accordance with Bankruptcy Rule 8005.

REFERENCE: Bankruptcy Rules 8005 and 8007

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

Upon the filing of a preliminary motion, as defined in Bankruptcy Rule 8010(c), in the district court or court of appeals, that arises out of an order issued by this Court, the moving party shall also file a copy of the preliminary motion and any order entered thereon on this Court’s docket.

Rule 8024-1 **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 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;
- (iv) “*Clerk*” means the clerk or a deputy clerk of the Court;
- (v) “*Court*” means the United States Bankruptcy Court for the Eastern District of New York and any Judge;
- (vi) “*Court’s Website*” means www.nyeb.uscourts.gov;
- (vii) “*District Clerk*” means the clerk or a deputy clerk of the District Court;

- (viii) “*District Court*” means the United States District Court for the Eastern District of New York;
 - (ix) “*District Judge*” means a United States District Judge or a judge appointed to, or sitting by designation in, the District Court;
 - (x) “*District Rules*” means the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York;
 - (xi) “*Electronic Case Filing*” or “*ECF*” means the Electronic Case File System implemented in this Court;
 - (xii) “*Former E.D.N.Y. Local Bankruptcy Rules*” means the United States Bankruptcy Court Eastern District of New York Local Bankruptcy Rules, effective May 28, 2008, as revised;
 - (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;
 - (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
 - (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 1/2” 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.*

If required by an individual Judge’s procedures to deliver chambers copies, a paper copy of each document filed, other than petitions, schedules, and proofs of claim, shall be marked “Chambers Copy” and delivered to the Clerk no later than the day after filing.

CROSS-REFERENCES: E.D.N.Y. LBR 5005-1, 5005-2
REFERENCE: General Order on Electronic Filing Procedures
Committee Note: Parties shall consult the Court’s Website for each Judge’s procedures with respect to chambers copies.

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

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

(a) *Motions.*

Unless otherwise provided by these rules or the Bankruptcy Rules:

- (i) all motion papers shall be served at least 14 days before the hearing date;
- (ii) any answering papers shall be served so as to be received at least 7 days before the hearing date;
- (iii) any reply papers shall be served and filed at least 3 days prior to the hearing date.

Untimely papers may not be considered by the Court. Any party filing papers with the Court within 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 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, 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.*

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

Rules 7(b) and 24 of the Federal Rules of Civil Procedure, as incorporated in Bankruptcy Rules 7007 and 7024, respectively, and E.D.N.Y. LBR 7005-1, 7007-1, 7007.1-1, 7012-1, 7016-1, 7026-1, 7026-2, 7030-1, 7033-1, 7034-1, 7036-1, 7052-1, 7054-1, 7055-1, 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, 7007.1-1, 7012-1, 7016-1, 7026-1, 7026-2, 7030-1, 7033-1, 7034-1, 7036-1, 7052-1, 7054-1, 7055-1, 7056-1

REFERENCES: Federal Rules of Civil Procedure 7(b), 24

Rule 9014-2 FIRST SCHEDULED HEARING

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

- (a) the Court gives prior notice to the parties that such hearing will be an evidentiary hearing;
- (b) the motion requests emergency relief and is made at the commencement of the case;
- (c) the motion requests interim or final relief under Bankruptcy Code §§ 363(b), 363(c)(2)(B), or 364;
- (d) the motion requests a continuation of the automatic stay under Bankruptcy Code § 362(c)(3)(B) or imposition of the automatic stay under Bankruptcy Code § 362(c)(4)(B);
- (e) the motion requests the Court's approval of rejection of an unexpired lease of real property under Bankruptcy Code § 365(a), and a timely objection thereto is filed; or

(f) the hearing is on confirmation of a plan in a case under chapter 9, chapter 11, chapter 12 or chapter 13 of the Bankruptcy Code.

REFERENCES: Bankruptcy Code §§ 363(c)(2)(B), 362(c)(3)(B), 364, 365(a)
Comment: Bankruptcy Rule 9014(e), added in 2002, requires that the Court provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify. Nothing in E.D.N.Y. LBR 9014-2 precludes a party from requesting an evidentiary hearing at the first scheduled hearing and asking the Court to provide for notice thereof in accordance with the final paragraph of the rule.

Rule 9018-1 DOCUMENTS FILED UNDER SEAL

(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 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 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) 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, 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 9019-2 LOSS MITIGATION FOR INDIVIDUAL DEBTORS WITH RESIDENTIAL REAL PROPERTY AT RISK OF FORECLOSURE

Loss mitigation procedures for the facilitation of consensual resolutions for individual debtors whose residential real property is at risk of loss to foreclosure shall be governed by the Loss Mitigation Program Procedures promulgated by the Court, which is available on the Court's Website ([INSERT LINK]). Individual Judges of the Court may, through individual and/or chambers rules, choose not to participate in the Loss Mitigation Program.

Rule 9020-1 DEFAULT SANCTIONS; IMPOSITION OF COSTS

Failure of a party or counsel for a party to appear before the Court at a conference, complete the necessary preparations, or be prepared to proceed at the time set for trial or hearing may be considered an abandonment of the adversary proceeding or contested matter or a failure to prosecute or defend diligently, and an appropriate order of the Court may be entered against the defaulting party, including monetary sanctions, with respect to either a specific issue or the entire adversary proceeding or contested matter.

If the Court finds that the sanctions noted above are either inadequate or unjust to the parties, the Court may assess reasonable costs directly against the party or counsel whose action has obstructed the effective administration of the Court's business.

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

- (a) All documents filed with the Court shall comply with Bankruptcy Rule 9037.
- (b) The responsibility for redacting personal data identifiers (as defined in Bankruptcy Rule 9037) rests solely with the filing party, including counsel, parties in interest and non-parties. The Clerk, or claims agent if one has been appointed, will not review documents for compliance with this rule. In the event the Clerk or claims agent discovers that personal identifier data or information concerning a minor has been included in a pleading, the Clerk, or claims agent, is authorized, in its sole discretion, to restrict public access to the document in issue and to inform the filer of the requirement to file a motion to redact.
- (c) Notwithstanding the requirements of Bankruptcy Rule 9037, a party seeking to redact personal identifiers from a document or proof of claim already filed with the Court shall file a motion to redact the personal identifiers, in accordance with CM/ECF procedures, that identifies the proposed document for redaction by docket number or if applicable, by claim number. Prior to filing the motion to redact, the party shall contact the Clerk's Office to request that the Clerk's Office restrict the original document containing the personal identifiers from public view on the docket.
- (d) The filer shall include a certificate of service at the time the motion to redact is filed, showing service to the debtor, anyone whose personal information has been disclosed, the case trustee (if any), and the United States trustee.
- (e) The party seeking redaction shall file a correctly redacted document or proof of claim within 21 days of the granting of the motion.

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 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 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 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 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 9075-1 REQUEST FOR HEARING

A timely filed and served objection to a proposed action or order shall constitute a request for a hearing.

Rule 9075-2 CERTIFICATE OF NO OBJECTION

(a) This rule shall apply only in non-individual chapter 11 proceedings before the Court.

(b) If a motion or application has been filed and appropriate notice thereof has been served, and no objection, responsive pleading, or request for a hearing with respect to the motion or application has been filed or served before forty-eight (48) hours after the expiration of time to file an objection, counsel for the moving party may file a certificate of no objection (“CNO”) stating that no objection, responsive pleading, or request for hearing has been filed or served on the moving party. The CNO shall include the date of the filing and service of the motion or application, the deadline for filing an objection thereto, and a statement that counsel is filing the CNO not less than forty-eight (48) hours after the expiration of such deadline.

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

(d) Unless a hearing is required under the Bankruptcy Code or Bankruptcy Rules notwithstanding the absence of an objection, responsive pleading, or request for a hearing, upon receipt of the CNO, the Court may, in its discretion, enter the order accompanying the motion or application without further pleading, notice or hearing and, once the order is entered, the hearing scheduled on the motion or application shall be cancelled without further notice.

**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