

- _____ (ii) A petition commencing a case under ~~Chapter 7, 12 or 13~~ any chapter of the Bankruptcy Code in which the debtor's address is located in Nassau or Suffolk county County shall be filed ~~in the office of the Clerk in either the Westbury or Hauppauge courthouse or, when the operations of those courthouses have been transferred to Central Islip, in the office of the Clerk in the Central Islip courthouse;~~ or designated as a Central Islip case if filed electronically.
- _____ (iii) ~~A petition commencing a case under Chapter 11 of the Bankruptcy Code may be filed in any office of the Clerk.~~
- _____ (iv) ~~Notwithstanding the foregoing provisions of this E.D.N.Y. LBR 1002-1(a)~~

(b) Electronic Filing.

Notwithstanding subdivision (a) of this rule, a petition commencing a case under any ~~Chapter~~ chapter of the Bankruptcy Code ~~may shall~~ be filed by electronic means ~~if, to the extent, and under the procedures, authorized by the Court.~~

~~(b)~~ 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, ~~promptly upon the filing,~~ shall provide the debtor, debtor's counsel and the ~~Case Trustee~~ trustee, if any, with a notice of the deficiencies.

~~_____ In addition, in a chapter 11 case, in the event that any deficiencies in connection with a filing have not been cured within seventy-two (72) hours, the Clerk shall also serve a notice of hearing to consider dismissal of the petition upon the debtor, debtor's attorney and the United States Trustee to be held at the first regular calendar date of the Judge to whom the petition is referred, but no less than fifteen (15) days after the date of such service.~~

~~(c) Effect of Failure to Provide Certain Required Information.~~

~~_____ If the petition fails to specify the chapter under which relief is being sought, the case will be deemed to have been filed under Chapter 7, unless a filing fee consistent with filing under Chapter 9, 11, 12 or 13 has been paid, in which case the petition will be deemed filed under such other chapter. If the petition fails to specify whether it is a consumer or business case, it will be presumed to be a consumer case. If the petition fails to indicate the number of creditors or~~

equity holders, or the amount of assets or debts, it will be presumed that the case falls in the smallest category of each:

(d) ~~Identification Code~~

~~All petitions filed with the Clerk must set forth in the upper right hand corner of the first page of the petition (i) the identification code of the law firm of the attorney who signed the petition, or (ii) in the event that the attorney who signed the petition is not affiliated with a law firm, the identification code of the individual attorney. The identification code for a law firm is the firm's nine digit tax identification number. The identification code for an individual attorney is the first initial of the first and last names, followed by the last four digits of the attorney's social security number.~~

~~All papers and pleadings subsequently filed in the case and/or adversary proceeding must also set forth, in the upper right hand corner, the identification code for the law firm or the individual attorney, as the case may be.~~

~~When appearing as trustee, the Case Trustee must add the prefix "t" to his or her identification code.~~

CROSS-REFERENCE:— E.D.N.Y. LBR 1073-1, 9011-1

REFERENCES: Bankruptcy Code § 521; Court's Website; General Order on Electronic Filing Procedures

Rule 1005-1 DEBTOR'S ADDRESS IN PETITION

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

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

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

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

Rule 1007-1 LIST OF CREDITORS

(a) *Creditor List.*

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

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

~~All schedules Schedules D, E, and lists (including the mailing matrix)F~~ which were not submitted at the time of filing of the petition but are filed thereafter mustshall be accompanied by: (i) ~~an affidavit setting forth specific additions to and deletions from the mailing matrix or list of creditors that was originally filed with the petition, and~~ (ii) ~~a new mailing matrix that (A) reflects the revised list of creditors, and (B) complies with LBR 1007-2: (i) Local Form No. USBC-64 entitled “Affidavit Pursuant to Local Rule 1007-1(b)” and (ii) the applicable filing fee.~~

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

REFERENCE: Court’s Website
Committee Note: Local Form No. USBC-64 is available at the intake counter of the Clerk’s office and at the Court’s Website.

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

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

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

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

(a) *General Requirements.*

- (i) At the time of filing a voluntary petition or within ~~fifteen~~ (15) days following the entry of an order for relief on an involuntary petition, 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).
- (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) *Creditor Mailing Matrix Specification.*~~

- ~~(i) All creditor mailing matrices must be produced on a typewriter or computer printer, using a standard typeface, on plain white, 8 1/2" x 11" bond paper. Creditors' names and addresses must be listed in a single column down the center of the page, allowing top and bottom margins of at least one inch. Each creditor listing must consist of no more than five (5) lines, with each line consisting of no more than 25 characters. Listings must be separated by at least one (1) blank line. There must not be any extra or stray marks on the matrix. It must not contain any page numbers, case number or listings for the debtor or debtor's attorney.~~
- ~~(ii) In cases involving 50 to 100 creditors, it is optional for the debtor or debtor's counsel to also submit the mailing matrix on a floppy computer diskette. In cases with more than 100 creditors, it is required that the debtor or debtor's counsel also submit the mailing matrix on an appropriately configured computer diskette. The file on the diskette must be saved under the name CREDITOR.TXT and must be the only file included on the diskette. The diskette~~

~~must be write-protected and labeled with the case name, allowing room on the label for entry of the case number. The diskette must be submitted at the time of filing of the petition.~~

~~(c)~~(b) *Accuracy of Information Provided and Amendment of ~~Creditor Master~~ Mailing Matrix.*

The debtor and debtor's attorney are responsible for the preparation of the ~~creditor~~ mailing ~~matrices~~matrix and any amendments thereto. Upon the need for any amendment to a ~~creditor~~ 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 sign and verify the matrix on the last page attesting to the accuracy and completeness of the information to the best of debtor's ability.~~ 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 1007-3~~ Rule 1007-4 **DEBTOR'S AFFIDAVIT TO BE FILED IN CHAPTER 11 CASES**

(a) *Contents of Affidavit.*

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

- (i) whether the debtor is a small business debtor within the meaning of Bankruptcy Code § 101(51D);
- (ii) the nature of the debtor's business and a ~~concise~~ statement of the circumstances leading to the debtor's filing under chapter 11;
- (iii) if the in a case originally ~~was~~ commenced under chapter 7, 12 or 13, the name and address of any ~~Case Trustee~~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;
- (iii)iv) the names and addresses of the members of, and professionals employed by, any committee organized prior to the order for relief in the chapter 11 case, and a ~~brief~~ description of the circumstances surrounding the formation of the committee and the date of its formation;

- (~~iv~~v) with respect to each of the holders of the ~~twenty~~(20) largest general unsecured claims, excluding insiders: name, address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), telephone number, name(s) of person(s) familiar with the debtor's account, amount of the claim, and ~~an indication of~~ whether the claim is contingent, unliquidated, disputed, or partially secured;
- (~~v~~vi) with respect to each of the holders of the ~~five~~(5) largest secured claims: name, address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), amount of the claim, a ~~brief~~ description and an estimate of the value of the collateral securing the claim, and whether the claim or lien is disputed;
- (~~vi~~vii) a summary of the debtor's assets and liabilities;
- (~~vii~~viii) the number and classes of shares of stock, debentures, or other securities of the debtor that are publicly held, and the number of record holders thereof, listing separately those held by each of the debtor's officers and directors and the amounts so held;
- (~~viii~~ix) a list of all of the debtor's property in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents, or secured creditor, or agent for any such entity, giving the name, address, and telephone number of each such entity, the title of any proceeding relating thereto, and the court in which it is pending;
- (~~ix~~x) a list of the premises owned, leased, or held under any other arrangement from which the debtor operates its business;
- (~~x~~xi) the location of the debtor's ~~substantial~~significant assets, the location of its books and records, and the nature, location, and value of any assets held by the debtor outside the territorial limits of the United States;
- (~~xi~~xii) the nature and present status of each action or proceeding, pending or threatened, against the debtor or its property where a judgment against the debtor or a seizure of its property may be imminent;
- (~~xii~~xiii) the names of ~~the individuals who comprise~~ the debtor's existing senior management, their tenure with the debtor, and a ~~brief~~ summary of their relevant responsibilities and experience;

- (~~xiii~~xiv) the estimated amount of the weekly payroll to employees (exclusive of officers, directors, stockholders, ~~and~~ partners ~~and members~~) for the ~~thirty (30) day~~30-day period following the filing of the chapter 11 petition;
- (~~xiv~~xv) the amount paid and proposed to be paid for services for the ~~thirty (30) day~~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;
- (~~xv~~xvi) a schedule, for the ~~thirty (30) day~~30-day period following the filing of the chapter 11 petition, of estimated cash receipts and disbursements, net cash gain or loss, obligations and receivables expected to accrue but remaining unpaid, other than professional fees, and any other information relevant to an understanding of the foregoing; and
- (~~xvi~~xvii) such additional information as may be necessary to fully inform the Court of the debtor's rehabilitation prospects.

(b) *When to File.*

In a chapter 11 case, upon the entry of an order for relief, the affidavit shall be filed forthwith, but ~~in no event~~ later than ~~fifteen (15)~~ 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~~trustee showing that it is impracticable or impossible to furnish any of the foregoing information, the ~~Judge~~Court may ~~dispense with~~waive any of the foregoing provisions, with the exception of those contained in paragraphs (i) through (~~vi~~), ~~inclusive, of E.D.N.Y. LBR 1007-3(a)-vii) of subdivision (a) of this rule.~~

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

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

(a)- *Effectuation of Amendment.*

~~No~~An order is not required ~~for the filing of amended lists, schedules or statements by the debtor or Case Trustee. Amendments to file an amended voluntary petition, list, schedule, or statement by the debtor. Amendments to Schedules D, E, or F shall be accompanied by an affidavit setting forth the specific additions to and deletions from the lists or schedules. No such~~(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 ~~subsection 1009-1~~subdivision (b) of this rule has been filed ~~with the Clerk.~~ If a creditor is added or deleted, an amended ~~creditor~~ mailing matrix mustshall also be filed.

(b) *Notice of Amendment.*

A complete copy of the ~~document~~voluntary petition, list, schedule, or statement, as amended, together with ~~the copy of LBR 1009-1(a) affidavit~~Local Form No. USBC-63, shall be served by the amending party upon:

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

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

(c) *Number of Copies.*

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

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

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

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

CROSS-REFERENCES:- E.D.N.Y. LBR 3007-3 4003-1, ~~4004-1, 4007-1~~, 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.*

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

(b) *Notice of Entry.*

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

(c) ~~if~~ Dismissal.

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

REFERENCE: Bankruptcy Rule 7004

~~Rule 1014-1~~ **TRANSFER OF CASES OR PROCEEDINGS**

~~Whenever a case or adversary proceeding is ordered transferred from this district, the Clerk, promptly after the expiration of ten (10) days from the date of entry of the order, shall mail to the Court to which the case or adversary proceeding is transferred: (i) certified copies of~~

~~the opinion granting the transfer, if any, the transfer order, and the docket entries in the case or adversary proceeding; and (ii) the originals of all other papers on file in the case or adversary proceeding.~~

Rule 1017-1 DISMISSAL OF CASE AFTER CONVERSION

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

~~Rule 1020-1~~ **SMALL BUSINESS ELECTION**

~~— If a debtor files a written statement of election to be considered a small business, a copy of the statement shall be mailed by the debtor to all creditors and equity security holders and to the United States Trustee.~~

Rule 1073-1 ASSIGNMENT OF CASES AND PROCEEDINGS

(a) ~~Chapter 7, 12 and 13 Cases.~~ Assignment of Cases.

~~(i) Cases commenced under chapter 7, 12 or 13 in which the debtor's address is located in the counties of Kings, Richmond or Queens county shall be assigned equally and randomly to the~~

The Clerk shall randomly assign cases to the Judges. Notwithstanding the foregoing, the Court may adopt internal procedures whereby cases are assigned to Judges sitting in Brooklyn or Central Islip depending upon the location of the debtor's address. ~~Cases commenced under such chapters in which the debtor's address is located in Nassau county or certain portions of Suffolk county shall, while the Westbury courthouse remains in operation, be assigned equally and randomly to the Judges sitting in Westbury. Cases commenced under such chapters in which the debtor's address is located in other portions of Suffolk county shall, while the Hauppauge courthouse remains in operation, be assigned to the Judge sitting in Hauppauge. When all of the Court's Long Island operations are transferred to the Central Islip courthouse, all cases commenced under such chapters in which the debtor's address is located in Nassau or Suffolk county shall be assigned equally and randomly to the Judges sitting in Central Islip.~~

~~(ii) The Clerk, with the approval of the Chief Judge, may adjust assignments as often as is necessary to accommodate fluctuations in the number of filings in which the debtor's address is located in various counties or portions thereof.~~

(b) ~~Chapter 9 and 11 Cases.~~

~~_____Cases commenced under chapter 9 or 11 shall be assigned by random and equal drum selection to the Judges. Nevertheless, the Clerk may, with the approval of the Chief Judge, in the interest of justice or for the convenience of the parties, assign chapter 9 or 11 cases having a debtor's address in either of the counties of Richmond or Suffolk to a Judge sitting in Brooklyn or Hauppauge, respectively.~~

~~(c)~~ *Petitions of Affiliates or Related Cases.*

Notwithstanding ~~subdivisions~~subdivision (a) ~~and (b)~~ of this rule, cases involving affiliated or related debtors shall be assigned to the Judge to whom the first such case was assigned. ~~In addition, except as required by LBR 1073-1(a)(i), any chapter 7, 12 or 13, 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.

~~(d)~~ *Reassignment of Cases.*

~~_____The Judge to whom a case was originally assigned may refer the case to the Clerk for reassignment.~~

~~(e)~~ ~~In cases or proceedings not otherwise covered by these rules, the Clerk will make a random assignment.~~

~~(f)~~ *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 ~~matters or cases.~~ ~~In addition, the Chief Judge shall supervise and rule upon all matters and disputes relating to assignments and reassignments of cases.~~ cases or proceedings.

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

~~LBR 1073-2~~ Rule 1073-2

DISCLOSURE OF RELATED CASES

~~(a)~~ *Definition of Related Cases.*

Cases shall be deemed “Related Cases” for purposes of ~~E.D.N.Y. LBR 1073-1~~ this rule and E.D.N.Y. LBR ~~1073-2~~ 1073-1 if the earlier case was pending at any time within ~~six~~ 8 years before the filing of the ~~new~~ current petition, and the debtors in such cases:

- (i) are the same;
- (ii) are spouses or ex-spouses;
- (iii) are affiliates, as defined in ~~11 U.S.C.~~ 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 ~~another~~the other debtor's estate under ~~11~~U.S.C. Bankruptcy Code § 541(a).

(b) *Disclosure of Related Cases.*

- (i) A petition commencing a case shall be accompanied by ~~a~~Local Form No. USBC-2 entitled "E.D.N.Y. LBR 1073-2 Statement" ~~in the form prescribed by the Clerk.~~
- (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(s) is pending or has been pending at any time;
 - (B) the name of the debtor in such Related Case(s);
 - (C) the case number of such Related Case(s);
 - (D) the district and division in which such Related Case(s) is or was pending;
 - (E) the Judge(s) to whom such Related Case(s) was assigned;
 - (F) the current status of such Related Case(s);
 - (G) the manner in which the cases are related; and
 - (H) any real property listed in a debtor's Schedule A ("Real Property") which was also listed in a Schedule A filed in a ~~prior~~Related case.

(c) Sanctions.

The failure to fully and truthfully ~~to~~ 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.

~~(d) Any petition that is not accompanied by a E.D.N.Y. LBR 1073-2 Statement shall be deemed deficient.~~

CROSS-REFERENCE: E.D.N.Y. LBR 1073-1

REFERENCES: Bankruptcy Code §§ 101(2), 541(a); Court's Website

Committee Note: Local Form No. USBC-2 is available at the Court's Website and at the intake counter of the Clerk's office

Rule 1073-3 **CORPORATE DISCLOSURE**

(a) Who Must File.

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

(b) Time for Filing.

(i) In a voluntary case, the debtor shall file the E.D.N.Y. LBR 1073-3 Statement with the petition.

(ii) In an involuntary case, the debtor shall file the E.D.N.Y. LBR1073-3 Statement within 15 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 ~~NOTICE~~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 ~~motion or application~~hearing is not mandatory, the entity proposing to act or obtain an order, in lieu of proceeding by notice of hearing, may proceed by filing a motion or application, ~~may proceed by giving written notice, which shall be filed~~ with the Clerk, together with proof of service, ~~setting forth:~~ and a notice of presentment. The notice of presentment shall set forth:

- ~~(i) a statement of the action proposed to be taken or the order to be presented, including a concise statement of the terms and conditions of, and the reasons for, the proposed action or order;~~
- ~~(ii) the grounds in support thereof, including a concise statement of the legal authority;~~

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

(b) Proposed Order.

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

~~(b)~~ (c) Time for Notice.—

Any~~A~~ notice ~~pursuant to~~of presentment under subdivision (a) of this rule shall ~~be given~~provide at least ~~twenty (20) days prior to~~days' notice of the date ~~on which~~set for the proposed action ~~is to be taken or proposed order is to be presented.~~ or the presentment of the proposed order. If papers are served by first-class mail, an additional 3 days shall be added to the minimum service requirement. If papers are served by overnight mail or courier, an additional day shall be added to the minimum service requirement.

~~(c)~~(d) Entities to Receive Notice.—

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

~~(d)~~ (e) Objection.—

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

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

Rule 2002-2 NOTICE TO GOVERNMENTAL AGENCIES

(a) *United States Trustee.*

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

~~Office of the United States Trustee
825 East Gate Boulevard
Suite 304
Garden City, New York 11530~~

(b) *Internal Revenue Service.*

Except as otherwise requested by it, any notices required to be given to the ~~IRS shall be sent to each of the following:~~ 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.

~~Internal Revenue Service
Special Procedures Function
P.O. Box 60
Brooklyn, New York 11201~~

~~United States Attorney
Att. Chief of Bankruptcy Litigation
One Pierrepont Plaza -- 14th Floor
Brooklyn, New York 11201~~

~~U.S. Department of Justice, Tax Division
Box 55
Ben Franklin Station
Washington, D.C. 20044~~

(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 sent to each of the following: given to the New York State Attorney General. Notices to these entities shall be sent to the addresses specified at the Court's Website.

~~— New York State Department of Taxation and Finance
— Queens District Office
— 80-02 Kew Gardens Road
— Kew Gardens, New York 11415~~

~~— State of New York
— Office of the Attorney General
— 120 Broadway
— New York, New York 10271~~

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

LBR Rule 2003-1 **MANDATORY DISCLOSURES S IN CHAPTER 13 CASES**

(a) ~~— No later than ten (10) days~~ In all chapter 13 cases, the debtor shall provide the following documents to the trustee no later than 7 Business Days before the first date set for the meeting of creditors pursuant to Bankruptcy Code § 341(a): 11 U.S.C. § 341(a), ~~each debtor shall provide the following documents to the Case Trustee:~~

~~— (i) — copies of signed, filed state and federal income tax returns for the two most recent tax years for debtor(s);~~

~~— (ii) — copies of four (4) most recent pay stubs for debtor(s);~~

~~— (iii) —~~ (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 ~~affidavit(s)~~affidavits of contribution and copies of ~~four (4) most recent pay stubs for~~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)~~debtor's household;

(~~iv~~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(s) ha(s)/ve~~ has an ownership interest ~~(except that this information is not required in those Chapter 13 cases.~~ If a

valuation is prepared by a real estate broker, then the broker shall (A) have personally inspected the premises, (B) maintain an office in the vicinity of the premises, and (C) provide information on 4 recent comparable sales. All valuations must be less than 90 days old prior to filing;

(iv) copies of leases for all real property for which the debtor is lessor;

(v) in a case where the debtor(s) propose(s) to pay 100% to unsecured creditors);

~~(v) copies of lease(s) for all property rented out by debtor(s);~~

~~(vi) copy of the had a prior chapter 13 case pending within a year of the filing date, a copy of a detailed affidavit of changed circumstances, setting forth the details of all debtor(s)' prior filings, identifying specifically the reason(s) for the failure of prior case(s), and detailing debtor(s)' current economic circumstances (only applicable to a debtor(s) who previously filed a Chapter 13 petition); and~~

~~(vii) describing the disposition of each prior case and explaining how the debtor's circumstances have changed; and~~

(vi) copies of canceled checks, receipts ~~or~~ money orders documenting, or other documentation of payment of all mortgage installments ~~and lease payments, 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) The 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(s) of contribution and changed circumstances, required by LBR 2003-1(a)(iii) and (vi) above, must be filed with the Clerk, required under subdivisions (a)(ii) and (v), and (b)(ii) and (iii) of this rule.

(e)(d) Debtor(s) shall also provide promptly to the Case Trustee. A debtor shall promptly provide to the trustee any other documents within the scope of Fed. R. Bankr. P. Bankruptcy Rule 2004(b) that the Case Trustee trustee may request from time to time in the course of the case.

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

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

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

Rule 2014-1 EMPLOYMENT OF PROFESSIONAL PERSONS

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

(i) the terms and conditions of the employment, including the terms of any retainer, hourly fee, or contingent fee arrangement; The application shall also set forth

(ii) all compensation theretofore already paid or promised to the professional person in contemplation of or in connection with the services to be performed, and the specific source of such compensation. The application must also include a certification from; and

(iii) whether the professional person has previously rendered any professional services to the trustee, debtor, debtor in possession, the extent thereof and the status of the compensation therefor.

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

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

(i) ~~the accountant's name, business address, whether or not the accountant is a certified public accountant,; and to~~

(ii) the best estimated cost of the accountant's knowledge, the relationship to or business association with any attorney, creditor, debtor or any other party in the case; (ii) ~~whether the accountant has previously rendered any professional services to the Case Trustee, debtor or debtor in possession, the extent thereof and the status of the compensation therefor; and (iii) the nature and extent of the accountant's proposed services, the estimated cost thereof, the basis of such estimate and the extent to which the accountant is familiar with the books or accounts of the debtor.~~

(cd) ~~All ex parte proposed orders and supporting documentation for employment of any professional must be submitted to the United States Trustee trustee for review prior to filing with the Clerk. Two copies and a stamped, self-addressed envelope shall be included with any submission to the United States Trustee.~~

CROSS-REFERENCE:- E.D.N.Y. LBR ~~6004-1(d)~~, 6005-1
REFERENCES: Bankruptcy Code §§ 327, 1103

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

The debtor in possession or ~~Case Trustee trustee~~ in all chapter 11 and 12 cases, or a chapter 13 debtor engaged in business within the meaning of ~~§ 1304(a) of the~~ Bankruptcy Code § 1304(a), shall file ~~with the Clerk an original plus one copy,~~ and serve upon the United States ~~Trustee trustee~~ and counsel for the creditors' committee (if any) in a chapter 11 or 12 case, or the ~~Case Trustee trustee~~ in a chapter 13 case, ~~one copy of and provide to chambers, a~~ verified monthly ~~reports report~~ no later than the 20th day of each month, which shall be completed in the manner prescribed by the United States ~~Trustee trustee Guidelines, and in the case of a small business chapter 11 debtor, in accordance with Bankruptcy Code § 308 when such provisions shall~~

become effective. Failure to file required reports may constitute cause for dismissal or conversion of the case.

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

Rule 2016-1 COMPENSATION OF PROFESSIONALS

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

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

A person seeking a final award of compensation or reimbursement of expenses in a chapter 7 case shall file and serve an application ~~with the Clerk and serve a copy~~ on the ~~Case Trustee~~trustee and the United States ~~Trustee not trustee no~~ later than ~~twenty (20)~~ days prior to the date of the hearing on the ~~Case Trustee's trustee's~~ final account. Failure to file and serve an application within the time prescribed by this rule may result in its disallowance. ~~The United States Trustee shall file any objection~~Objections, if any, to such application shall be filed at least ~~five (5) business days~~5 Business Days prior to the date of the hearing.

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

Upon the filing of a chapter 7 or ~~chapter~~ 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 ~~Local Civil Rule 1.3 of the District~~ Rules Rule 1.3 may practice in this Court.

(b) *Pro Hac Vice.*

Upon motion ~~to the Judge~~ 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* ~~Designation of Address.~~

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

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

An attorney who has been authorized to be retained or has appeared as the attorney of record for ~~the debtor, Case Trustee, examiner~~ any party in any case or ~~committee~~ adversary proceeding may not withdraw or be relieved or displaced except by order after notice to the party represented, ~~any adversaries~~ and (if applicable), the United States Trustee 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) *Exceptions: Suspension.*

~~Except for subdivision (c), this rule shall not apply to: (i) the filing of a proof of claim or interest; or (ii) an appearance by a child support creditor or the creditor's representative.~~

(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.

EBR 2090-2
Rule 2090-2

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

(a) *In General.*

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

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

If the debtor's prepetition ~~pre-petition~~ written retainer agreement with his or her ~~the~~ attorney of record excludes the defense of an adversary proceeding from the agreed scope of

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

- (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:
 - (~~1~~A) the nature of the adversary proceeding and the claims asserted therein;
 - (~~2~~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;
 - (~~3~~C) the requirements of form and time limits applicable to the preparation, filing and service of a responsive pleading; and
 - (~~4~~D) how to serve and file a responsive pleading; ~~and~~ (~~5~~) why the attorney has not undertaken the representation; and

and

- (iv) if the attorney is, despite best efforts, unable to contact the debtor to communicate the information described in subparagraph subdivision (b)(iii) above of this rule, the affirmation shall also set forth ~~in detail~~ 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 ~~in defense of a Litigated Matter~~ under circumstances other than those described in ~~subparagraph~~subdivision (b) ~~above of this rule~~ shall be made pursuant to E.D.N.Y. LBR 2090-1. The ~~mere~~ filing of a withdrawal application pursuant to E.D.N.Y. LBR 2090-1 does not suspend the requirements of ~~E.D.N.Y. LBR 2090-2~~subdivision (a) ~~nor of this rule or~~ toll the running of the time limitations applicable to the interposition of responses to papers initiating ~~Litigated Matters~~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) Every^Δ motion to reduce, expunge, or reclassify ~~claims~~a claim shall have attached thereto a copy of the ~~filed~~proof of claim as filed (without exhibits) which identifies the claimant

~~by name and the claim's number-claim number. To the extent that the motion refers to claims scheduled but not filed, the motion shall so state. Every Each reference to a filed claim in both the moving papers and in any proposed order to be entered thereon shall refer to the claim both by name and number-of the claimant and claim number. The title of the motion shall refer to the claim by claim number.~~

~~(b) — No motion to reduce, expunge, or reclassify claims shall be directed to more than ten (10) claims, and no more than five (5) motions shall be heard on any calendar date.~~

~~(c) — Multiple motions to reduce, expunge, or reclassify claims shall be sequentially numbered and shall be organized such that each of the claims grouped in any motion shall be objected to on the same general grounds.~~

~~(d) — When a motion to reduce, expunge, or reclassify multiple claims has been adjourned, the moving party shall file with the Clerk, at least three (3) business days prior to the date to which the hearing was adjourned, a statement setting forth:~~

~~—— (i) — the name of the case;~~

~~—— (ii) — the docket number of the case;~~

~~—— (iii) — the last date the motion appeared on the calendar;~~

~~—— (iv) — the identity and disposition of those claims previously disposed of;~~

~~—— (v) — a list of those claims, identified by both number and name of claimant, whose objections still remain to be determined; and~~

~~—— (vi) — that each of the claimants whose claim still remains to be determined has been given notice of the adjourned hearing.~~

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

Rule 3007-2 MODIFICATION OF SCHEDULES OF CLAIMS

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

CROSS-REFERENCE:- E.D.N.Y. LBR ~~5075-1~~1009-1
REFERENCES: Bankruptcy Rules 1009, 3003, 3004, 3005

Rule 3015-1 CHAPTER 13 ~~--~~PLAN

(a) *Service of Plan.*

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

- (i) file the plan within ~~fifteen (15)~~ days, unless an extension is requested and granted by the Court; and
- (ii) serve the plan on the ~~Case Trustee~~trustee and all creditors within ~~ten (10)~~ days of filing ~~of the plan~~; and file proof of service thereof.

(b) *Notice and Hearing for Attorney's Fees ~~to be~~To Be Treated as Administrative Expense.*

If the compensation, or any portion thereof, of the attorney for a chapter 13 debtor is to be treated as an administrative expense under the plan, the attorney shall provide ~~adequate~~ notice of that fact to the debtor, the ~~Case Trustee~~trustee, the United States ~~Trustee~~trustee, and all creditors. ~~The notice~~Separate notices shall ~~not~~ be ~~deemed adequate~~required if the plan, or a summary of the plan, ~~which states with particularity~~ the date(s) and amount of any payments to be made to the attorney, and is served upon all parties in interest at least ~~fifteen (15)~~ days prior to the confirmation hearing.

**Rule 3015-2 CHAPTER 13 ~~--~~MODIFICATIONS OF PLANPLAN
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 ~~Case Trustee~~trustee and on all creditors not later than ~~ten (10)~~ days prior to ~~the date fixed for~~ the hearing on confirmation or any adjournment thereof.

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

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

proposed modified plan shall be attached to the motion or notice ~~a copy of the proposed modified plan~~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
~~CHAPTER~~-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). ~~Upon request, the Clerk shall supply the proponent, at a reasonable cost, with any available matrix of creditors for the purpose of preparing address labels.~~

(b) *Disclaimer.*

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

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

(c) Disclosure Statement Disclaimer in Small Business Cases.

In When a chapter 11 case ~~where the debtor has elected to be considered~~ is a small business case as defined in ~~§ 101(51C) of the~~ 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 ~~HAS ELECTED TO BE CONSIDERED~~ IS A SMALL BUSINESS. AS A RESULT, THE DEBTOR MAY DISTRIBUTE THIS DISCLOSURE STATEMENT BEFORE ITS FINAL APPROVAL BY THE COURT. IF AN OBJECTION TO THIS DISCLOSURE STATEMENT IS FILED BY A PARTY IN INTEREST, FINAL APPROVAL OF THIS DISCLOSURE STATEMENT WILL BE CONSIDERED AT OR BEFORE THE HEARING ON CONFIRMATION OF THE PLAN.

REFERENCE: Bankruptcy Code § 101(51C)

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

(a) Summary of Ballots and Notice of Cramdown.

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

- (i) a summary of the ballots received;
- (ii) whether the proponent proposes to confirm the plan by cramdown over the objection of one or more impaired classes; and

~~(b) — Payment of Special Charges.~~

~~— Upon confirmation, the proponent shall pay to the Clerk any special charges that may be assessed by the Court and shall pay to the United States Trustee any special charges assessed by it.~~

~~(c) — Final Decree.~~

~~— Within ninety (90) _~~

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

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

[ABROGATED]

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

Rule 3022-1 **FINAL DECREE**

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

PART IV **THE DEBTOR: DUTIES AND BENEFITS**

Rule 4001-1 **RELIEF FROM AUTOMATIC STAY**

(a) *By Motion.*

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

(b) *By Presentment.*

~~A~~If a motion for relief from the automatic stay under ~~§ 362 of the~~ Bankruptcy Code ~~may be made in the manner set forth in Local Bankruptcy Rule 2002-1. If a proper objection is filed~~§ 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 ~~§ 362(e) of the~~ Bankruptcy Code § 362(e) is deemed waived.

CROSS-REFERENCES:- E.D.N.Y. - LBR 2002-1, 5070-1
REFERENCE: Bankruptcy Code § 362

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

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

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

Rule 4001-3 **ORDERS CONTINUING OR IMPOSING THE AUTOMATIC STAY**

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

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

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

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

- (i) provide the landlord's name and address in the certification required under Bankruptcy Code § 362(l)(1);
- (ii) deliver to the Clerk, together with the petition (or, if the petition is filed electronically, within 1 Business Day of the filing), a certified or cashier's check or money order, made payable to the lessor, in the amount of any rent that would become due during the 30-day period after the filing of the petition;

- (iii) serve the landlord with a copy of the debtor's petition;
- (iv) file a copy of the judgment for possession, if available; and
- (v) if the landlord objects to the debtor's certification, attend the hearing on such objection.

(b) A debtor who obtained a 30-day stay pursuant to Bankruptcy Code § 362(b)(22) and (l) 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;
- (ii) if the landlord objects to the debtor's certification under Bankruptcy Code § 362(l)(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), (l).

~~Rule 4001-3~~ Rule 4001-5 **CASH COLLATERAL AND OBTAINING CREDIT**

~~A motion pursuant to § 364(c) or (d) of the Bankruptcy Code shall state whether priority over any administrative expense specified in § 503(b) or § 507(a) of the Bankruptcy Code is sought.~~

(a) *Motions.*

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

- (i) the absence of any carve-out for professional fees, or provisions that provide treatment for the professionals retained by the debtor that is different than that provided for the professionals retained by a creditors' committee with respect to a professional fee carve-out;
- (ii) provisions that require the debtor to pay the secured creditor's expenses and attorneys' fees in connection with the proposed financing or use of cash collateral, without any notice or review by

the Office of the United States trustee, creditors' committee (if formed), or the Court; or

- (iii) provisions that exclude from a carve-out any request for professional fees related to the investigation of whether the secured creditor's lien is valid and/or properly perfected.

(b) *Interim Relief.*

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

REFERENCES: Bankruptcy Code §§ 363 and 364
Committee Note: The proposed amendments to Bankruptcy Rule 4001, which took effect on December 1, 2007, contain provisions governing the form of cash collateral and financing motions. This rule is not intended to supersede or duplicate Bankruptcy Rule 4001, but imposes additional requirements on proponents of cash collateral and financing motions.

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

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

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

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

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

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

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

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

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

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

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

(e) *Confidentiality of Personal Identifiers.*

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

(f) *Confidentiality of Tax Information.*

Any party in interest who obtains tax information of the debtor shall keep such information confidential and shall disclose only to the extent necessary in connection with the case or related adversary proceeding. Any party in interest who seeks to disclose tax information

of the debtor for any other purpose shall seek authority to do so by motion on notice to the debtor and the debtor's attorney, if any. Any person or entity who discloses a debtor's tax information in a manner inconsistent with this rule may be found in contempt of court and may be subject to penalties therefor.

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

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

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

Rule 4003-1 AMENDMENT TO CLAIM OF EXEMPTIONS

An amendment to a claim of exemptions pursuant to Bankruptcy Rules 1009 and 4003 ~~must~~ and these rules shall be filed and served on the ~~Case Trustee~~ trustee, the United States ~~Trustee~~ trustee, ~~and~~ all creditors, and other parties in interest. ~~No such~~ An amendment shall not be effective until proof of service is filed, which ~~must~~ shall be done within ~~ten~~ (10) days of service.

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

REFERENCE: Bankruptcy Rule 1009

Rule 4003-2 OBJECTION TO A CLAIM OF EXEMPTION

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

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

Rule 4004-2 Rule 4004-1 SETTLEMENT OR DISMISSAL OF PROCEEDINGS OBJECTING TO DISCHARGE

A complaint objecting to discharge ~~shall not~~ may be settled or dismissed ~~unless an affidavit of~~ only if the debtor or representative of the objecting party ~~shall have been made and filed~~ files an affidavit or affirmation setting forth what consideration, if any, has been paid or promised to the objecting party. ~~Said~~ The affidavit or affirmation must be served upon the ~~Case Trustee and~~ trustee, all creditors, and other parties in interest.

Rule ~~4007-2~~ 4007-1

**SETTLEMENT OR DISMISSAL OF PROCEEDINGS
OBJECTING TO DISCHARGEABILITY**

In all instances not governed by ~~§ 524(d) of the~~ Bankruptcy Code § 524(d), ~~no~~an adversary proceeding objecting to dischargeability of a debt ~~shall~~may be settled or dismissed ~~except pursuant to an order after inquiry into the circumstances of any settlement, including~~only if a proponent of the settlement or dismissal files an affidavit or affirmation setting forth the terms of any agreement entered into between the debtor and creditor relating to the payment of the debt; in whole or in part.

REFERENCE: Bankruptcy Code § 524(d)

PART V COURTS AND CLERKS

Rule 5001-1 CLERK'S OFFICE: CONTACT INFORMATION

(a) *Mailing Addresses.*

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

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

(b) *Physical Addresses and Phone Numbers.*

Brooklyn Office:
United States Bankruptcy Court
271 Cadman Plaza East
Brooklyn, New York 11201
Phone No. (347) 394-1700

Central Islip Office:
United States Bankruptcy Court
Alphonse M. D'Amato Federal 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 5001-1 Rule 5001-2
FILING

CLERK'S OFFICE:- HOURS; AFTER HOURS

The offices of the Clerk shall be open on Monday through Friday ~~from~~between the hours of 9:00 a.m. ~~to~~and 4:30 p.m., except on legal or court holidays, and shall be closed on Saturdays and Sundays. When the Clerk's office is closed, papers relating to cases pending in Brooklyn may be submitted ~~to the Bankruptcy Court~~ in a night depository located in the courthouse lobby of the United States District Court, 225 Cadman Plaza East, Brooklyn, New York ~~11201~~. ~~When the Court's Long Island operations are transferred to the Central Islip courthouse, and the Clerk's office is closed, papers required to be filed at that courthouse~~11201; papers relating to cases pending in Central Islip may be submitted in a night depository located in the ~~lobby at that location~~courthouse lobby of the Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722. If the papers are deposited in a night depository, they will be deemed ~~to have been~~ filed as of the exact time and date stamped on the papers, ~~except that a petition initiating a case will not be deemed to be filed until received and stamped by the Clerk.~~ ~~Between the hours of 9:00 a.m. and 4:00 p.m., persons~~ Persons may review records, request files ~~to be pulled~~ for public review, review ~~docket(s)~~dockets, request ~~docket(s) to be pulled~~dockets for public 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 ~~10:00 a.m. to 12:00 noon, and 2:00 p.m. to 4:00 p.m.~~9:00 a.m. and 4:00 p.m.

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

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

~~All papers (other than the petition commencing the case) in any case, proceeding or contested matter~~ All papers in any Non-electronic Case shall be filed in the office of the Clerk located where the Judge who is assigned to the matter regularly sits.

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

Rule 5005-2 **FILING BY ELECTRONIC MEANS**

(a) Password and Registration.

(i) Attorneys

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

(ii) Limited Creditors

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

(b) Filing Requirements.

- (i) All motions, pleadings, memoranda of law, exhibits, and other documents required to be filed with the Court in connection with a case and documents filed under seal in accordance with E.D.N.Y. LBR 9018, shall be electronically filed over the Internet. Within 1 Business Day of the electronic filing, a chambers copy shall be filed with the Clerk to the attention of the appropriate Judge's chambers, which copy is to be marked "Chambers Copy." The date and time of the electronic filing shall be the official date and time of the filing of the document.
- (ii) Proofs of claim may be filed electronically. A "Chambers Copy" shall not be filed with the Clerk.
- (iii) All documents that form part of a motion or pleading, and which are being filed at the same time and by the same party, except for a memorandum of law, may be electronically filed together under one docket number. A memorandum of law shall be filed separately and shall indicate the motion or pleading to which it relates.
- (iv) Relevant excerpts of exhibits that are not in electronic form shall be scanned and electronically filed. Such document excerpts shall be identified as excerpts, shall not exceed 20 pages, and shall state that the entire document is in the possession of the filing party and is available upon request. The complete exhibit shall be made available forthwith to counsel on request, and shall be available in the courtroom at any hearing on the matter. Persons filing excerpts of exhibits pursuant to these procedures do so without prejudice to their right to file additional excerpts or the entire exhibit with the Court at any time. Opposing parties may file any additional excerpts that they believe to be germane. Chambers copies of complete exhibits shall be provided to the Court on request.

CROSS- REFERENCE:-

REFERENCE:

Committee Note:

E.D.N.Y. LBR 9018-1

General Order on Electronic Filing Procedures

Attorney and Limited Creditor ECF password applications are available at the intake counter of the Clerk's office and at the Court's Website.

Rule 5010-1 REOPENING CASES

(a) *Contents of Motion.*

A motion to reopen a case pursuant to ~~§ 350(b) of the~~ Bankruptcy Code § 350(b) and Bankruptcy Rule 5010 shall ~~be in writing and~~ 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.*

~~A motion to reopen a case shall be filed with the Clerk.~~ 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 ~~Local Bankruptcy Rule~~ E.D.N.Y. LBR 1073-1.

(c) *Filing Fee.*

A filing fee shall be ~~payable~~ 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, ~~unless~~ 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, in which event no filing fee is required. ~~In addition, a Judge may waive this. The Court may defer or waive the filing fee under appropriate circumstances or may defer payment of the fee by trustees pending discovery of additional assets.~~

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 of the Court.~~ The ~~and the~~ Clerk promptly shall transmit the motion to the District Clerk promptly and so notify the movant. The movant shall be responsible for notifying all other parties. Following the transmittal of the motion, all further papers with respect to the motion shall be filed in the District Court.

Rule 5070-1—

CALENDARS AND SCHEDULING

(a) *Obtaining Return Date.*

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

(b) *Adjournments ~~Sine-Die~~ Without Date.*

Any matter adjourned without date~~sine-die~~ and not restored to the calendar within sixty ~~(60)~~ days shall~~may~~ be deemed withdrawn without prejudice.

CROSS-REFERENCE~~S~~:- 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

PHOTOGRAPHS CAMERAS, RADIO, RECORDINGS RECORDERS AND TELEVISION OTHER ELECTRONIC DEVICES

[ABROGATED]

~~Local Civil Rule 1.8 of the District Rules applies to all cases and proceedings pending before the Court.~~

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

CLERK -- DELEGATED FUNCTIONS OF USE OF SERVICES AND AGENTS

~~(a) *Clerk's Use of Outside Services and Agents.*~~

The Court may direct~~permit~~, subject to the supervision of the Clerk, the use of services and agents either on or off the Court's premises, to file~~maintain~~ Court records, either by paper or electronic means, to issue notices, to maintain case dockets, to maintain Judges' calendars~~file~~ certain documents, and to maintain and disseminate other administrative information where~~when~~ the costs of such facilities or services and agents are paid for by the estate.

~~(b) The Clerk shall maintain a duplicate of all electronic records maintained by agents appointed by the Court.~~

~~(c) Docket Entries.~~

~~With the exception of proofs of claim, the Clerk shall consecutively number each paper (other than routine correspondence) filed in a case or adversary proceeding and enter that number on the appropriate docket sheet next to the corresponding entry. Proofs of claim shall be consecutively numbered and entered on a separate claims docket.~~

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**~~(b)~~**

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004-1 SALE OF PROPERTY, APPRAISALS AND AUCTIONS

(a) *Conflict of Interest.*

~~No~~An appraiser, auctioneer, or officer, director, stockholder, agent, employee, or insider of an appraiser or auctioneer, or any relative of any of the foregoing, shall not purchase, directly or indirectly, or have a financial interest in the purchase of, any property of the estate that the appraiser or auctioneer has been employed to appraise or sell.

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

~~The~~A party seeking to sell property of the estate outside the ordinary course of business shall give the notice required by Bankruptcy Rule 2002(a)(2) and, if applicable, Bankruptcy Rule 6004(g). Such notice ~~at a minimum~~ 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 offers offer proposed to be accepted;
- (iv) the place, date, and time of the sale;
- (v) the place, date, and time the property may be examined prior to the sale;
- (vi) the date by which objections to the sale must be filed with the Court;
- (vii) the date of the hearing to consider any objections to the sale ~~which are filed with the Court~~; and
- (viii) the name and address of the ~~Case Trustee~~ trustee, if any.

~~(c) — Order Confirming Sale Unnecessary:~~

~~— No order will be required to effect a properly noticed, undisputed sale of property completed by the debtor in possession or Case Trustee in accordance with the terms of this rule and Bankruptcy Rule 6004. Instead, there shall be filed with the Clerk a report setting forth:~~

- ~~(i) — date of completion of the sale;~~
- ~~(ii) — the name or names of persons to whom the property is sold; and~~
- ~~(iii) — the price received for each separate item or lot sold.~~

~~(d) — Appraisals:~~

- ~~(i) — Filing and Access. Any appraiser employed pursuant to § 327(a) of the Bankruptcy Code shall file with the Clerk and the United States Trustee each appraisal made of property of the estate not later than 12:00 noon on the business day prior to the scheduled sale of the property. Each appraisal shall be kept under seal upon filing and treated as confidential by the Court, the Case Trustee and the United States Trustee. Access to the appraisal may be had only by the Court, the United States Trustee, the Case Trustee and such other parties as the Court may direct, and neither they nor the appraiser shall disclose any of the contents thereof until after the consummation or abandonment of the sale of the appraised property.~~

- ~~(ii) Filing Under Seal. Any appraisals filed in connection with a sale shall have a cover sheet bearing the caption of the case in compliance with Local Bankruptcy Rule 9004-2 and the date, if any, of the proposed sale. It shall be marked as "Confidential-- Appraisal To Be Filed Under Seal."~~
- ~~(iii) Conformity with Auctioneer's Catalogue of Sale. If property is to be appraised and sold at auction, upon request, the auctioneer promptly shall deliver the catalogue of sale to the appraiser. The appraisal shall conform to the catalogue to the extent possible.~~

~~(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 ~~sale~~auction;
- (ii) prior to receiving bids, the auctioneer shall announce the terms of sale;
- (iii) ~~where~~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 ~~sale~~auction shall be set apart and conspicuously marked "not included in the sale,"; and such fact shall be announced by the auctioneer before the ~~sale~~auction.

~~(d)~~ *Joint Auction Sales*Auctions.

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

~~(e)~~ *Proceeds of Auction*Sale.

Upon receipt of the proceeds of sale, the auctioneer ~~shall~~ immediately ~~shall~~ deposit the proceeds in a separate account that the auctioneer maintains for the estate in accordance with ~~the requirements of § 345(a) of the~~ Bankruptcy Code § 345(a). Payment of the gross proceeds of the sale shall be made promptly by the auctioneer to the ~~Case Trustee~~trustee or debtor in possession, but in no event later than ~~ten (10)~~ days after ~~the date on which~~ the proceeds are received ~~with respect to each item or lot sold.~~.

(~~h~~) *Report of Auction-Sale.*

Within ~~twenty~~(20) days after the last date of the auction, the auctioneer shall file a verified report ~~with the Clerk~~ and ~~transmit a copy of~~provide the report to the ~~Case Trustee~~trustee and the United States ~~Trustee~~trustee. If all proceeds of the auction have not been received by such date, the auctioneer shall file a supplemental report within ~~ten~~(10) days after all proceeds have been received. The report shall set forth:

- (i) the time, date, and place of the ~~sale~~auction;
- (ii) the gross dollar amount ~~of received at~~ the ~~sale~~auction;
- (iii) if property was sold in lots, a description of the items in each lot, the quantity in each lot, the dollar amount received for each lot, and any bulk bid(s) received;
- (iv) an itemized statement of expenditures, disbursements, and commissions allowable under ~~Local Bankruptcy Rule~~E.D.N.Y. LBR 6005-1, including the name and address of the payee; ~~together with the original and~~ receipts or canceled checks; ~~or true copies thereof~~; for the expenditures or disbursements. ~~Where~~When labor charges are included, the report shall specify the days worked and the number of hours worked each day by each person ~~and the person's social security number~~supported, ~~together with~~by an affidavit from ~~all persons~~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) ~~where~~when the auctioneer has a blanket insurance policy covering all sales conducted by the auctioneer, ~~for which original receipts and canceled checks are not available, an explanation of how the~~a statement of how any insurance expense charged to the estate was computed;
- (vi) if any articles were withdrawn from the ~~sale~~auction because of a third party claim of an interest therein, a ~~separate itemized~~ statement of the articles ~~reflecting~~and the names of ~~such~~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 ~~sale~~auction;

- (ix) the items for which there were no bids and the disposition of those items;
- (x) the terms ~~and conditions~~ of sale that were ~~read to the audience immediately~~announced prior to ~~the commencement of the sale~~receiving bids;
- (xi) a statement of the manner and extent of advertising of the saleauction, 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 ~~Case Trustee~~trustee, the United States ~~Trustee~~trustee, or the ~~Judge~~Court may request.

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

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

- (i) whether the auctioneer is duly licensed;
- (ii) the auctioneer's license number and place of business;
- (iii) the authority pursuant to which the auctioneer conducted the auction;
- (iv) the date and place of the auction;
- (v) that the labor and other expenses incurred on behalf of the estate as listed in the report of saleauction were reasonable and necessary; and
- (vi) that the gross proceeds ~~of sale~~ were remitted to the ~~Case Trustee~~trustee or debtor in possession and the date of the remittance.

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

An advertisement or publication of notice of a sale by auction or otherwise may be made without Court approval if it is sufficient to provide adequate notice of the sale and is advertised or published at least once in a newspaper of general circulation in the city or county in which the property is located. The advertisement or publication shall include:-

- (i)- the date, time, and place of the sale;-
- (ii)- a description of the property to be sold;-
- (iii)- the terms and conditions of the sale; and-
- (iv)- the name, address, and telephone number of- the auctioneer. The Judge may fix the manner and extent of advertising and publication at any time.

(k) *No Order Needed to Confirm Sale.*

Unless a timely objection is made, ~~no~~an order of the Court shall not be required to confirm a sale of property ~~pursuant to this rule. The Case Trustee~~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~~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 ~~with the Clerk~~ pursuant to ~~Local Bankruptcy Rule~~E.D.N.Y. LBR 2002-1 and that no timely objection has been filed.

CROSS-REFERENCES: E.D.N.Y. LBR 2002-1, 2014-1, 6005-1, 9018-1
REFERENCES: Bankruptcy Code § 245(a); Bankruptcy Rules 2002, 6004, General Order on Electronic Filing Procedures
Committee Note: Subdivisions (c) and (d) of former E.D.N.Y. LBR 6004-1 were abrogated.

Rule 6005-1 AUCTIONEERS

(a) *Retention of Auctioneer.*

~~No~~A debtor in possession or ~~Case Trustee shall~~trustee may retain the services of an auctioneer ~~without,~~ subject to prior ~~order of the~~ Court approval.

(b) *Compensation.*

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

- (i) commissions on each sale conducted by the auctioneer at the following rates:
 - (A) 10% of any gross proceeds of sale up to \$50,000;
 - (B) 8% of any gross proceeds of sale in excess of \$50,000 but not more than \$75,000;
 - (C) 6% of any gross proceeds of sale in excess of \$75,000 but not more than \$100,000;
 - (D) 4% of any gross proceeds of sale in excess of \$100,000 but not more than \$150,000; and
 - (E) 2% of any gross proceeds of sale in excess of \$150,000; and
- (ii) reimbursement for reasonable and necessary expenses directly related to the sale, including labor, printing, advertising, and insurance, but excluding workers' compensation, social security, unemployment insurance, and other payroll taxes. When directed by the ~~Case Trustee~~ 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 ~~§ 327 of the~~ Bankruptcy Code § 327 shall not act until the auctioneer files ~~with the Clerk, together with a copy~~ and provides to the United States ~~Trustee~~ 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~~ 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 ~~be permitted to~~ file, at the auctioneer's own expense, a blanket bond covering all cases in which the auctioneer may act. The blanket bond shall be in favor of the United States in such sum as the United States ~~Trustee~~trustee shall fix and shall be conditioned for each estate on the same terms as bonds in separate estates.

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

An auctioneer shall file an application with the Clerk for approval of commissions and reimbursement of expenses and give notice in accordance with Bankruptcy Rule 2002(a). ~~No An~~ application ~~shall~~may not be granted ~~unless if~~ the report of sale and accompanying affidavit ~~referred to~~described in ~~Local Bankruptcy Rule~~E.D.N.Y. LBR 6004-1(~~hf~~) and (~~ig~~) have not been filed. The application shall state whether the debtor or the ~~Case Trustee~~trustee has any objection to such application.

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

Rule 6007-1 ABANDONMENT OR DISPOSITION OF PROPERTY

~~The notice~~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 concisely the reason for the proposed abandonment or disposition.

PART VII — ADVERSARY PROCEEDINGS

Rule 7005-1 FILING OF DISCOVERY-RELATED DOCUMENTS

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

CROSS-REFERENCE: E.D.N.Y. LBR 8007-1.
Committee Note: Former E.D.N.Y. LBR 7005-1(b) was abrogated.

~~(b) — When discovery or disclosure material not on file with the Court is needed for an appeal, the necessary portion of that material may be filed with the Clerk.~~

Rule 7007-1 ~~————~~ **MOTIONS**

~~(a) ———~~ *Opposition to Motions:*

~~————~~ A response to any motion in an adversary proceeding is required. It shall be in writing, state with particularity the legal and factual grounds therefor, and be served on the movant and any other parties in the adversary proceeding.

~~(b) ———~~ *Discovery-Related Motions:*

~~————~~ No discovery-related

Rule 7007-1 **DISCOVERY RELATED MOTIONS**

A discovery motion under Bankruptcy Rules 7026 through 7037 shall be ~~heard unless~~ counsel for supported by an affidavit or affirmation certifying that the moving party ~~files with the~~ Clerk, at or prior to the hearing, an affidavit certifying that such counsel has ~~conferred with or~~ made a good faith effort to confer with ~~counsel for~~ the opposing party in a bona fide effort to resolve ~~by agreement~~ the issues raised by the motion by agreement and without judicial intervention and, but has been unable to reach an agreement. The affidavit or affirmation shall describe the efforts ~~employed~~ to resolve the discovery dispute without judicial intervention. ~~If any of the issues raised by the motion are resolved prior to the hearing, the~~ The affidavit or affirmation shall specify the any issues so resolved and the issues remaining unresolved. The affidavit ~~must be served so as to be received by the opposing party and the Judge prior to the hearing~~ or affirmation shall be filed and served together with the motion.

CROSS-REFERENCES:- E.D.N.Y. -LBR 9006-1 ,9013-1
REFERENCES: Bankruptcy Rules 7026, 7037

Rule 7016-1 ~~————~~ **SUBMISSION OF MARKED PLEADINGS**

~~————~~ At least three (3) business days before an adversary proceeding is scheduled for trial, counsel for the plaintiff shall file with the Clerk and serve upon opposing counsel, so as to be received at least three (3) business days prior to trial, a copy of marked pleadings, which shall consist of a copy of the complaint and any third party complaint, cross claim, or counterclaim; briefly indicating in the margin thereof, at each numbered paragraph, the manner in which the defendant or respondent, or any third party defendant or respondent who has filed an answer thereto, responds to the allegations contained in each paragraph.

Rule 7024-1 NOTICE OF CLAIM OF UNCONSTITUTIONALITY

[ABROGATED]

~~Any time a party raises a question concerning the constitutionality of an act of Congress or a state legislative body affecting the public interest, such party shall notify the Judge in writing of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and proceeding.~~

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

Committee Note: Former E.D.N.Y. LBR 7024-1 was redesignated E.D.N.Y. LBR 9005.1.

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

~~Before or after the announcement of a decision, the Judge, on notice to all parties, may require the submission of proposed findings of fact, with specific reference to the record, 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 Judge. Proposed findings of fact and conclusions of law shall not form any part of the record.~~

~~**Rule 7054-1 COSTS -- TAXATION/PAYMENT**~~ **TAXABLE COSTS**

~~Local Civil Rule 54.1 of the District Rules~~ District Rule 54.1 applies in cases and adversary proceedings.

REFERENCE: District Rule 54.1

Rule 7055-1 DEFAULT JUDGMENT

~~Judgment by default pursuant to Bankruptcy Rule 7055 may be entered in an adversary proceeding only after motion, upon notice to the defendant(s)~~ A motion seeking a default judgment may be sought only by motion, which shall be served on the defaulting party, the defaulting party's attorney, if any, and, except in an adversary proceeding to determine dischargeability, the ~~Case Trustee~~trustee.

Rule 7056-1 SUMMARY JUDGMENT

~~Upon any~~ A motion for summary judgment pursuant to Bankruptcy Rule 7056, ~~there shall be annexed to the notice of motion a separate, short and concise~~ 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 ~~constitute~~be grounds for denial of the motion. The ~~papers opposing~~opposition to a motion for summary judgment shall include a separate, ~~short and concise~~ statement of the material facts as to which it is contended that there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving

party will be deemed to be admitted by the opposing party unless controverted by the statement required to be served by the opposing party. Each statement of material fact by a movant or opponent must be followed by citation to evidence which would be admissible, set forth as required by Federal Rule of Civil Procedure 56(e).

REFERENCE: Federal Rule of Civil Procedure 56(e)

PART VIII ~~————~~ **APPEALS TO DISTRICT COURT OR
BANKRUPTCY APPELLATE PANEL**

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

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

Rule ~~8007-1~~8006-1 **RECORD ON APPEAL**

(a) Designation of Items.

(i) Non-electronic Cases.

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

(ii) Electronic Cases.

When a party files a designation of items to be included in a record on appeal pursuant to Bankruptcy Rule 8006 and 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 ~~retain the original of each item designated, and~~ transmit to the District Clerk, as the record on appeal, the full copies of such items. ~~Upon the docketing of the notice of appeal in the District Court, all papers relating to the appeal shall be filed with the District Clerk, including any request for a stay pending~~

appeal excerpted items. A party shall electronically file in the bankruptcy case any item that party has designated that does not already appear on the docket.

(b) *Exhibits Designated as Part of Record on Appeal. Exhibits Not Designated.*

~~Not later than three (3) business days after the filing of the designation or counter-designation of the contents for inclusion in the~~ Exhibits not designated to be included in a record on appeal, ~~the attorney having possession of the original of any designated exhibit shall deposit it, or a true copy thereof, with the Clerk. Exhibits not so designated shall remain in the custody of the attorney~~ who has possession of such exhibits, who shall have the responsibility of promptly forwarding them to the clerk of the appellate court upon that clerk's request.

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

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

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

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

An order or judgment of an appellate court, when filed in the office of the Clerk, shall automatically 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 twenty (20) 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 ~~Local Bankruptcy Rules~~ rules -

~~(i) "Bankruptcy Act" means the Bankruptcy Act of 1898, as amended (repealed 1978);~~

- ~~(ii)~~ *"Bankruptcy Code" or "Code"* means title 11 of the United States Code, as amended from time to time;
- ~~(iii)~~ *"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;
- ~~(iv)~~ *"Case Trustee"* means the person charged with the administration of the case;
- ~~(v)~~ ~~(iii)~~ *"Business Day"* means any day that is not a Saturday, Sunday, or "legal holiday" as that term is defined in Bankruptcy Rule 9006(a).
- ~~(iv)~~ *"Chief Judge"* means the Chief Judge of the Court;
- ~~(v)~~ *"Clerk"* means the clerk or a deputy clerk of the Court;
- ~~(vi)~~ *"Court"* means the United States Bankruptcy Court for the Eastern District of New York; and any Judge;
- ~~(viii)~~ ~~(vii)~~ *"Court's Website"* means www.nyeb.uscourts.gov ;
- ~~(viii)~~ *"District Clerk"* means the clerk or a deputy clerk of the District Court;
- (ix) *"District Court"* means the United States District Court for the Eastern District of New York;
- (x) *"District Judge"* means a United States District Judge or a ~~Judge~~judge appointed to, or sitting by designation in, the District Court;
- (xi) ~~"~~*"District Rules"* means the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York;
- (xii) *"Electronic Case Filing" or "ECF" means the Electronic Case File System implemented in this Court;*
- (xiii) *"Electronic Case" means any case (except chapter 11) or adversary proceeding filed after January 1, 2003, or any chapter 11 case and any associated adversary proceeding filed after April 1, 2002;*

(xiv) "*Former Local Bankruptcy Rules*" means the United States Bankruptcy Court Eastern District of New York Local Bankruptcy Rules, effective ~~January~~July 1, ~~1981~~1999, as revised;

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

(xvi) "*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);

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

~~(xiv)~~xviii) "*United States Trustee trustee*" means the Office of the United States ~~Trustee~~trustee for ~~the Second Circuit~~Region 2 or its authorized representative for the Eastern District of New York.

(b) *Construction.* -

(i) Unless inconsistent with the context, ~~other or stated otherwise above,~~ words and phrases used in these ~~Local Bankruptcy Rules~~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 ~~Local Bankruptcy Rules~~rules include those filed or transmitted by electronic means ~~to the extent authorized.~~

Rule 9004-1 PAPERS -- REQUIREMENTS OF FORM

(a) *Form of Papers.*

~~(i) Papers submitted~~Submitted for ~~filing~~Filing.

(i) Papers filed shall:

(A) be plainly typed, printed, or copied;

(B) ~~have~~ have no erasures or interlineations which materially deface them; and

(C) be signed in accordance with Bankruptcy Rule 9011.

~~(ii) Every petition, schedule or other paper which is submitted to the Clerk (excluding proofs of claim and Case Trustees' Reports of No Distribution) shall be affixed in a legal back.~~

~~(iii) All papers submitted must~~ Papers filed shall be on 8 ½" x 11" paper, ~~have two holes punched at the top of the document~~ and shall not be stapled or otherwise bound on the side. ~~These holes shall be centered and set three inches apart.~~

(b) *Amendments.*

~~Any~~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) *Copy for United States Trustee.*

~~A copy of any paper filed with the Clerk, other than a proof of claim, may be submitted at the Clerk's office for transmittal to the United States Trustee. This does not constitute service where service is required.~~

~~(d) Chambers Copy.~~

A paper copy of each paper document filed ~~with the Clerk~~electronically or otherwise, other than petitions, schedules, and proofs of claim, shall be marked "Chambers Copy" and delivered to the Clerk ~~on the same date as the papers are filed with the Clerk.~~ within 1 Business Day of filing.

CROSS-REFERENCE: E.D.N.Y. LBR 1009-1, 4003-1, 4004-1, 4007-1

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

Rule 9004-2 CAPTION -- PAPERS, GENERAL

- (a) All papers submitted for filing shall have a caption ~~reading~~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 ~~docket~~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 ~~docket~~case number. Except for involuntary petitions, all petitions for relief shall also set forth the last four digits of the debtor's social security or 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. ~~documents.~~ ~~In addition, the submitting party shall set forth a brief description of the relief sought. All further papers shall set forth in the upper right hand corner the last date on which the matter appeared on the calendar and the next scheduled return, hearing or trial date.~~

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

Rule 9005.1-1 NOTICE OF CLAIM OF UNCONSTITUTIONALITY

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

CROSS-REFERENCE: E.D.N.Y. LBR 9014-1
REFERENCE: 28 U.S.C. § 2403
Committee Note: This is former E.D.N.Y. LBR 7024-1.

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

- (a) *Motions.*

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

- (i) all motion papers shall be served at least ~~ten~~(10) days before the ~~return~~hearing date. ~~Any.~~

- (ii) any answering papers shall be served so as to ensure actual receipt be received not later than three (3) days before the return date. 3 Business Days before the hearing date;
- (iii) any reply papers shall be served and filed, and a paper copy shall be delivered to the Clerk's office, at least 1 Business Day prior to the hearing date.

Any party filing papers with the Court within 2 Business 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 ~~shall be filed with the Clerk within three (3) business days after service but in no event later than five (5) business days prior to the hearing. Reply papers, if any, (except reply papers as provided in subdivision (a) of this rule) shall be filed by the movant at least one business day prior to~~ no later than 1 Business Day following the return date of service.

(c) *Extra Time ~~if for~~ Service ~~is by~~ Mail.*

If papers are served by first-class mail, an additional ~~three (3) days must be added to the minimum service requirement; provided, however, that if the Court authorizes the papers to be served electronically or if the papers are served by overnight courier or mail, only one additional day must~~ 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 ~~1002-1, 5005-1, 7007-1,~~ 9013-1
 REFERENCE: Bankruptcy ~~Rules~~ Rule 2002, ~~9006~~

Rule 9011-1 ATTORNEYS -- DUTIES SIGNING OF PAPERS

(a) ~~All papers that are submitted for filing shall~~ Whenever Bankruptcy Rule 9011(a) requires a paper to be signed by an attorney ~~of record in the attorney's own name or, if there is no attorney, by the party. The~~ or by a party acting pro se, the name of the attorney or party *pro se* shall be ~~clearly~~ printed or typed below the signature, ~~together with the attorney's or party's address and telephone number. If signed by an attorney, the initials of the attorney's~~

(b) Electronic Signatures.

Whenever any applicable statute, rule, or order requires a document to be signed and the document is filed in an Electronic Case, the document shall contain an electronic signature or a scanned copy of the original signature. An electronic signature shall consist of "s/" followed by the first and last name followed by the last four digits of the attorney's social security number

shall appear immediately after the attorney's 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.

~~(b) — The initials of the attorney's first and last name followed by the last four digits of the social security number of the attorney making an electronic filing shall constitute the signature of the attorney for purposes of Bankruptcy Rule 9011. An original signed copy of the shall be maintained in the attorney's files.~~

(c) Any password required for 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.

~~(d) — The provision of this rule relating to electronic filing shall become effective only when electronic filing is otherwise authorized.~~

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.*

Each A motion shall be in writing, unless made during a hearing, and shall specify the rules and statutory provisions upon which it is predicated and the specific legal and 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 pursuant to which the relief is sought. If such specification has not been made, the Judge may for relief. Failure to provide this information may be grounds to strike the motion from the calendar: or deny the motion.

~~(b) — Memorandum of Law.~~

~~— Each motion and response thereto shall be accompanied by an appropriate memorandum of law setting forth the points and authorities relied upon. Failure to comply with this subdivision may be deemed sufficient cause for the denial of the motion or the granting of the motion by default.~~

(b) *Responsive Papers.*

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

(c) Proposed Order.

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

~~(c-d)~~ *Entities to Receive Notice.*

~~In addition to the requirements of~~ notice required by any applicable Bankruptcy Rule 2002 ~~and Local Bankruptcy Rule 2002-2~~ 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.

~~(d-f)~~ ~~*Hearing Required.*~~ *Hearing and Oral Argument Required.*

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

~~(e)~~ ~~*Motions for Reconsideration.*~~

~~A motion for reconsideration shall be served and filed within ten (10) days after the entry of the Judge's order.~~

~~(f-g)~~ *Motions to Avoid Liens.*

Motions seeking relief pursuant to ~~11 U.S.C. § 522(f)~~ must include one or more affidavits setting forth: (i) 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(s). ~~In addition, there must be evidentiary support (other than tax assessments).~~

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,~~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 9023~~2002~~

Rule 9014-1 CONTESTED MATTERS

~~— Federal Rule of Civil Procedure 7(b) as incorporated in Bankruptcy Rule 7007, Bankruptcy Rule 7024, and Local Bankruptcy Rules E.D.N.Y. LBR 7005-1, 7007-1, 7016-1, 7024-1, 7052-1, 7054-1 and 7056-1;~~ shall apply in contested matters. Any reference to adversary proceedings in such rules shall be deemed for this purpose a reference to contested matters.

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

Rule 9018-1 DOCUMENTS FILED UNDER SEAL IN ELECTRONIC CASES

(a) Motion.

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

(b) Delivery of Sealed Documents.

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

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

(c) Destruction of Documents Filed Under Seal.

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

REFERENCE: General Order on Electronic Case Filing

Rule 9019-1— ALTERNATIVE DISPUTE RESOLUTION ~~---~~ MEDIATION

(a) ~~Assignment of Matters To~~ of a Matter to Mediation.

The Court may ~~order assignment of any matter to mediation upon its own motion, upon a motion by any~~ 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 ~~or the U.S. Trustee, or upon a stipulated order submitted by the parties. Notwithstanding assignment of a case, proceeding or other matter.~~ The Court may determine which parties in interest shall participate in the mediation. If a Matter is assigned to mediation, the parties shall ~~remain responsible for complying~~ comply with all applicable pleading, discovery ~~or, and~~ other deadlines and ~~any other applicable~~ scheduling requirements ~~in any court order, provision of the Code, Bankruptcy Rules or E.D.N.Y. Local Bankruptcy Rules, and the matter shall proceed on the court docket in the normal course for such a matter unless the Court orders otherwise.~~

(b) ~~Appointment of a Mediator.~~

The ~~parties~~ mediation participants shall ~~choose~~ select a mediator and at least one alternate from the Mediation Register of approved mediators kept by the Clerk. ~~The parties' selection shall occur~~ within ~~ten~~ 10 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 ~~ten~~ 10 days ~~thereafter~~ of the selection of a mediator, the ~~parties~~ mediation participants and the mediator ~~(or the alternate, if the mediator fails to accept appointment)~~ shall submit a proposed consent order ~~(i) appointing the mediator, and (ii) setting forth basic terms of the mediation, including, for example, the terms governing and describing the mediation procedures, including the terms of the mediator's compensation and expense reimbursement (hereafter referred to as the "Mediation Order"~~ "Mediation Order"). Any terms of the mediation ~~Procedures that are~~ not set forth in the Mediation Order shall be governed by ~~this Local Rule or, if not addressed herein, by the terms that may be set by~~ agreement of the parties, by this rule, or, ~~absent such agreement,~~ by the mediator. ~~If the parties cannot agree upon a mediator and an alternate within such time, or if the Judge deems selection by the Court to be appropriate, the Court shall appoint a mediator and alternate.~~

(c) ~~The~~

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 ~~Procedure~~ Procedures.

- (i) ~~After consultation with all attorneys and parties subject to the mediation, the mediator shall fix a reasonable time and place.~~ Unless the Court orders otherwise, the mediator and the mediation participants shall agree on the time and location for the initial mediation conference ~~and shall promptly give the attorneys and parties no less than fourteen days' advance written notice of the conference. The conference shall be held as soon, which shall take place as soon as practicable~~ after the entry of the Mediation Order ~~as is practicable, but in no event later than thirty~~ 30 days after the entry of the Mediation Order. The mediator may require the ~~parties to submit any materials the mediator directs to be prepared or assembled, including any relevant documents and/or~~ mediation participants to submit or exchange documents or information, including a mediation statement, ~~prior to~~ before the initial mediation conference.
- (ii) ~~Each party~~ mediation participant that is an individual shall attend the mediation conference in person. ~~All other non-governmental parties (e.g., corporations, partnerships, limited liability companies) shall attend in person through~~ Each mediation participant that is a government entity shall attend in person by a representative who has complete authority and discretion to settle all disputed amounts and issues. ~~To the extent a governmental party consents to participation in the mediation, it shall attend, to the extent practicable, authority to settle the matter. All other mediation participants shall attend the mediation conference~~ in person through a representative ~~who has, to the greatest extent feasible, with~~ authority to settle, and who is knowledgeable about the facts of the case, the governmental party's position, and the

~~procedures and policies under which the governmental party decides whether to accept proposed settlements. Notwithstanding the foregoing, the~~matter. The mediator may permit telephonic or video participation in the mediation conference in appropriate circumstances.

- (iii) ~~To ensure prompt dispute resolution, the~~The mediator shall ~~have the duty and authority to establish the time for all mediation activities, including private meetings~~determine the time and place for the mediation, including mediation conferences and caucuses between the mediator and ~~parties~~a mediation participant, and the submission of relevant documents, ~~provided that a party may object to meeting~~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. ~~The mediator shall control all procedural aspects of the mediation not otherwise agreed to by the parties or set by the Court.~~
- (iv) The mediator ~~shall have the authority to establish~~may set a deadline for the ~~parties to act upon a proposed settlement or upon a settlement recommendation from the mediator.~~
- (v) ~~Additional rules and~~mediation participants to respond to a settlement proposal, including a settlement proposal by the mediator.
- (v) Additional mediation procedures for the mediation may be ~~negotiated and~~ agreed upon by the mediator and the ~~parties at any time~~mediation participants during the mediation process.
- (d) ~~Recommendations of~~Settlement Proposals by the Mediator.

The mediator ~~shall have no obligation to make written comments or recommendations; provided, however, that the mediator may furnish the attorneys for the parties and the parties with a written settlement recommendation. Any such recommendation shall not be filed with the Court.~~

(e) ~~Parties' Failure To Comply With Mediation Rule~~

~~In the event of any party's willful failure to attend or participate~~ 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 ~~in good faith in accordance with this Local Rule,~~ then the mediator shall ~~serve on the parties and file a report describing any such failure to attend or participate in~~ submit to the Clerk and serve on the mediation process in good faith. The report (and any responsive papers thereto) shall be ~~filed with the Clerk and state, in bold in the upper right hand corner of the front page,~~ 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 ~~assigned to mediation, who will take all appropriate steps to ensure that the papers are not,~~ 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 ~~to whom~~ presiding over the ~~case is assigned~~ matter. The Clerk shall deliver the report to the Judge designated by the Chief Judge for mediation, who will take ~~such action as may be~~ appropriate action, including ~~conducting~~ holding a ~~telephonic~~ conference or ~~scheduling a hearing and imposing~~ hearing in person or telephone, and who may, in appropriate circumstances, impose sanctions.

(f) Post-Mediation Procedures.

- ~~(i)~~ If the ~~event that the parties~~ mediation participants reach an agreement as a result of the mediation, such agreement shall promptly be memorialized in writing and executed by the parties. Within five days of execution of such agreement, the parties shall provide the mediator with a copy of the executed agreement. ~~Within 10 days following receipt of the executed 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 ~~Clerk, with a copy to the chambers of the Judge assigned to the case,~~ Court a report stating that the mediation has ~~resulted in a settlement. The parties shall file either (a) the agreement, or (b) a motion seeking approval of the agreement, whichever is appropriate, with the Clerk within twenty days of the date the mediator's report is filed with the Court.~~

~~(ii) In the event that the parties cannot reach an agreement as a result of the mediation, the mediator shall file a report with the Clerk, with a copy to the chambers of the Judge assigned to the case and the parties, so indicating.~~

~~(iii) reached an impasse and should be concluded.~~

(iii) Upon the filing of a ~~mediator's~~ the mediator's report pursuant to subparagraphs (i) or (ii) above, the mediation will be placed in suspense and the mediator will be excused from undertaking any further actions, unless otherwise requested by the ~~parties~~ mediation participants or directed by the Court. ~~The mediation will be deemed terminated and the mediator will be excused and relieved from further responsibilities in the matter upon approval by the Court of the settlement, or upon the mediator's application to be relieved.~~

~~(g)~~ (g) *Withdrawal from Mediation*

⋮

~~Any matter referred pursuant to this Local Rule~~ At any time, the Court may be withdrawn ~~withdraw a matter~~ from mediation by the assigned Judge at any time upon determination for any reason that the matter is not suitable for mediation. ~~Nothing in this Local Rule shall prohibit or prevent any~~ if the Court determines that the mediation referral is no longer appropriate. At any time, a party in interest, the ~~U.S. Trustee~~ United States trustee, or the mediator ~~from requesting~~ may request a conference with the Court or ~~filing~~ file a motion ~~seeking~~ to withdraw a matter from mediation for cause.

~~(h)~~ Mediator Compensation of the Mediator;

The ~~mediator's compensation shall be~~ mediator shall be compensated on ~~such~~ terms ~~as that~~ are satisfactory to the mediator and the ~~parties, and~~ mediation participants. ~~The mediator's compensation~~ shall be subject to Court approval if the estate is to ~~be charged with such~~ pay any part of the expense. The mediator and the ~~parties~~ mediation participants shall ~~include all~~ set forth the terms ~~relating to~~ of the mediator's compensation in the Mediation Order. ~~See subparagraph (b) of this Local Rule.~~ Absent agreement or ~~Court~~ order to the contrary, the ~~parties to the mediation~~ participants shall pay equal shares of the mediator's compensation. ~~In the event that~~ If the mediator and the ~~parties~~ mediation participants cannot agree on ~~the terms of~~ compensation terms, the Court shall fix ~~such~~ terms ~~as that~~ are reasonable and just. The ~~mediator~~ Court may, after notice to the parties, request to be relieved if unwilling to accept the Court's ruling or such terms. also request the mediator serve pro bono or on a reduced fee basis.

(i) *Qualifications of the Mediator.* -

The Clerk shall ~~establish and~~ maintain a Mediation Register. Appointments to the Mediation Register shall be for ~~three year~~5-year terms, ~~subject to renewal upon reapplication.~~ To qualify for appointment to the Mediation Register, a person must:

- (~~1~~i)- file an application in the form established by the Clerk; ~~;~~
- (~~2~~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; ~~;~~
- (~~3~~iii)- not have been ~~affiliated with or~~ employed by the Court during the 36-month period preceding the date of such person's appointment to the Mediation Register; ~~;~~ and
- (~~4~~iv)- meet the following minimum qualifications:

(~~f~~A)— For Lawyers Applying to be a Mediator: A ~~person~~lawyer must: ~~;~~

- (1)- be, or have been, a member in good standing of the New York State bar for at least ~~five~~5 years; -
- (2)- be admitted to practice in ~~at least~~ one of the ~~District Courts~~district courts in the Second Circuit; -
- (3)- have completed ~~a mediation course or courses consisting of~~ at least 12 hours of mediation training; -
- (4)- be willing to undertake a minimum of ~~three~~5 *pro bono* mediation assignments during the course of the ~~three-year term; and~~ (~~5~~5) 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. ~~The Chief Judge may waive any of the foregoing requirements for good cause set forth in the application. Each person certified as a mediator shall take the oath or affirmation administered by the Chief Judge before serving as a mediator.~~

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

- ~~(1)~~ be, or have been, authorized to practice for at least ~~five~~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 ~~three~~five *pro bono* mediation assignments during the course of the ~~three-year~~5-year term; and

(5) be certified by the Chief Judge.

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

(j) ~~Removal from the Mediation Register.~~

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

(k) ~~List of Mediators, Their Qualifications and Fees~~The Mediation Register.

The Clerk shall maintain, ~~and make available to the public,~~ a list of the persons on 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 ~~supplied by each mediator~~ and ~~such~~fee information ~~concerning~~supplied by the ~~mediator's fee structure as the mediator provides~~mediator to the Clerk. The Clerk shall also maintain for public inspection ~~copies of~~ the applications filed by ~~applicants whose names appear on~~persons appointed to the Mediation Register.

(l) Confidentiality.

Any oral or written statements made by the mediator, ~~by the parties~~ mediation participants, or ~~by~~ others during the mediation process shall not be ~~divulged~~disclosed by any of the mediation participants in the mediation, or their agents, or ~~by the mediator (other than, except that such statements may be disclosed~~ to a Judge designated to hear a mediation dispute matter under Subparagraph subdivision (e) of this Local Rule, rule. Matters not to ~~the extent necessary to resolve any such dispute), including~~be disclosed include, without limitation: ;

- (i) ~~views expressed or suggestions made by a party~~ participant with respect to a possible settlement of the dispute;
- (ii) ~~the fact that another party had or had not~~ 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 ~~party in the course of the mediation~~ participant; and

- (v) documents prepared for ~~the purpose of, use~~ in the course of, or pursuant to the mediation. ~~All records~~

Records, reports, or other documents received by a mediator ~~while serving in such capacity~~ shall be confidential and shall not be provided to the Court ~~(except as required by Subparagraph subdivision (e) of this Local Rule) rule~~. The mediator shall not be compelled to ~~divulge such records or to testify in regard to or~~ disclose any information concerning the mediation in ~~connection with any arbitral, judicial or other proceeding, including any hearing held by the Court in connection with the referred matter, except any hearing held by the Court under Subparagraph (e) of this Local Rule~~ any forum or proceeding, except as required by subdivision (e) of this rule. Unless the parties mediation participants and the mediator agree or the Court orders otherwise, ~~sixty~~60 days after the mediator files a report under ~~subparagraph subdivision (f)(i) or (f)(ii) above~~ of this rule, the mediator may ~~destroy~~discard the submissions made by the parties mediation participants and any other ~~records of the substance of documents or information relating to~~ the mediation.

~~In addition, without limiting the foregoing, 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, ~~however,~~ shall not ~~become exempt~~be immunized from discovery; or inadmissible in evidence because it was disclosed in the mediation., merely by being used by a party in mediation. ~~These provisions shall not preclude a party, its counsel or the mediator from responding in confidence to appropriately conducted inquiries or surveys concerning the use of mediation generally.~~

~~—The disclosure by a party of privileged information to the mediator or another party during the mediation process shall not constitute a waiver or otherwise adversely affect the privileged nature of the information.~~

- (m) Immunity.

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

REFERENCE: Federal Rule of Evidence 408

Rule 9021-1 ENTRY OF ORDERS, JUDGMENTS AND DECREES

(a) *Entry.*

The Clerk shall enter all orders, decrees, and judgments of the Court in the ~~electronic filing~~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.*

~~The index of the Record of Judgments maintained by the Clerk for judgments entered up to and including January 31, 1999 is officially located in the Office of the District Clerk. The index of the Record of Judgments maintained by the Clerk for judgments entered on or after February 1, 1999 is officially located in the Brooklyn Office of the Clerk. Each court will, however, maintain~~Each Court maintains a separate index of ~~all~~ judgments signed by the respective Judges located at that site.

Rule 9023-1 COSTS; NEW TRIALS; ~~COSTS~~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) ~~of the Bankruptcy Code~~ and Bankruptcy Rule 2010, all bonds, undertakings, and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, where may be approved by the Clerk when the amount of such bonds or undertakings has been fixed by a Judge, an Court ~~order of the Court or a or~~ statute, may be approved by the Clerk.

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 a 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 a consent to electronic service by the attorney receiving the password pursuant to Bankruptcy Rule 9036, and except as otherwise provided in subdivision (c) of this rule, constitutes a waiver by such attorney of the right to receive service by other, non-electronic means.

(b) **Service by Electronic Transmission.**

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

(c) **Exceptions to Electronic Service.**

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

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

(d) **Proof of Service.**

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

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

Rule 9070-1 CUSTODY OF EXHIBITS

(a) *Retention by Attorney.*

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

(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 ~~thirty (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 ~~thirty (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 ~~Judge~~ Court directs a party to settle an order, judgment, or decree, the party shall, within ~~fifteen (15)~~ days of the ~~Judge's~~ Court's direction, or such other time period as the Court may direct, file its proposed order, judgment, or decree ~~with the Clerk~~ upon ~~not less than five (at least 5)~~ 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. ~~Two (2) days' notice is required of all counter-proposals~~ Counter-proposals of the proposed order, judgment, or decree shall be filed and served on at least 2 days' notice. ~~No proposed or counter-proposed order, judgment, or decree settled pursuant to this rule shall form a part of the record of the case, adversary proceeding or contested matter. If the order is not timely submitted or settled, the matter shall be~~

~~deemed abandoned. Three (3) days must be added to the notice requirement if service is made by mail. If the proposed or counter-proposed order, judgment, or decree is served by first-class mail, an additional 3 days shall be added to the minimum service requirement. If the proposed or counter-proposed order, judgment, or decree is served by overnight mail or courier, an additional day shall be added to the minimum service requirement.~~

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

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

(c) *Reference to Hearing Date.*

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

(d) *Abandonment of Matter.*

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

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

(a) *Orders to Show Cause.*

~~No~~An order to show cause shall be ~~granted except upon a clear and specific showing by affidavit of good and sufficient~~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.*

~~No~~An *ex parte* request for an order ~~in an adversary proceeding or contested matter~~ shall be ~~granted unless~~ based ~~upon~~on an affidavit or an affirmation ~~by an attorney or an affidavit~~ showing cause for *ex parte* relief, and stating whether a previous application for similar relief has been made.

(c) *Orders Shortening Time.*

When expedited relief is thought necessary and the requirements for an order to show cause are not present and *ex parte* relief is not appropriate, the moving party may proceed by submitting a proposed order shortening time. A request for an order shortening time may be

made *ex parte* and shall be supported by an affidavit or an affirmation showing cause for such expedited relief and stating whether a previous application for similar relief has been made.

REFERENCE: Bankruptcy Rule 9006

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

~~Rule 9078-1~~ ————— ~~PROOF OF SERVICE~~

~~Any party serving a pleading or other document shall file proof of service not later than the earlier of three days following the date of service or the time of the hearing.~~

~~CROSS-REFERENCE: E.D.N.Y. LBR 1002-1, 5005-1, 7007-1~~