

LOCAL BANKRUPTCY RULES

REDLINE DRAFT

FOR PUBLIC COMMENT PERIOD

October 26, 2009 to November 25, 2009



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

**Edward R. Roybal Federal Building
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Los Angeles, California 90012
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Summary of LBR Revisions

Subject to 30-day Public Comment Period Commencing October 26, 2009

The Bankruptcy Court has drafted a revision of its Local Bankruptcy Rules (LBRs) and invites public comments on the proposed draft. All comments must be in writing and received by the Court *no later than November 25, 2009*. Comments should be emailed to bkcomments@cacb.uscourts.gov. Please include your name, address, telephone and fax numbers, and email address so that you may be contacted about any questions regarding your comments.

Proposed revisions to the LBRs are listed in the following three sections:

A. General Revisions to the LBRs

<u>LBR</u>	<u>Page(s)</u>
2015-2	21
2090-1	40-43
2090-2	43-44
3015-1(g)(3)	55
3015-1(q)	59-60
4003-2(a)	75
7016-1	91-93
9004-1(b)	114

B. LBRs Revised to Comply with Statutory Time Periods Technical Amendments Act

The following LBRs have been modified to become consistent with the Statutory Time-Periods Technical Amendments Act of 2009 (Pub. L. No. 111-016) enacted on May 7, 2009, and changes to the federal rules effective December 1, 2009. The statutory adjustment revises time periods to multiples of 7 days (the statutory adjustment does not affect LBR time periods of less than 5 days nor periods of 30 days or more).

	<u>LBR</u>	<u>Page</u>	<u>Current Time Period</u>	<u>New Time Period</u>
1.	1002-1(d)(2)	3	15 days	14 days
2.	1017-2(a)(2) & (3)	9	15 days	14 days
3.	2002-2(a)(3)(C)	14	10 days	less than 14 days
4.	2004-1(f)	16	11 days	14 days
5.	2010-1(d)(1)	18	10 days	14 days
6.	2014-1(a)(3)	18	15 days	14 days
7.	2014-1(a)(4)	18	20 days	21 days
8.	2014-1(b)(3)(E)	20	15 days	14 days
9.	2015-2(d)(3) [as revised]	21	5 days	7 days
10.	2016-2(d)	27	5 court days	7 days
11.	2016-2(f)(1)	30	10 days; 15 days	14 days; 21 days
12.	3015-1(b)(1) & (2)	51	15 days	14 days

	<u>LBR</u>	<u>Page</u>	<u>Current Time Period</u>	<u>New Time Period</u>
13.	3015-1(b)(3)	51	10 days	14 days
14.	3015-1(b)(6)	52	15 days	14 days
15.	3015-1(c)(3) - (5)	52-53	8 days	7 days
16.	3015-1(g)(1)	55	8 days	7 days
17.	3015-1(h)(1)	55	8 days; 25 days	7 days; 28 days
18.	3015-1(k)(3)	57	20 days	21 days
19.	3015-1(o)	59	10 days	14 days
20.	3015-1(r)(2)(A) & (B)	61	10 days	14 days
21.	3015-1(w)(1)(B)	64	20 days	21 days
22.	3017-1(b)	66	11 days	14 days
23.	4001-2(f)	74	10 days	14 days
24.	5095-1(a)(1),(2) & (3)	82	15 days	14 days
25.	5095-1(b)	82	20 days; 11 days	21 days; 14 days
26.	6004-1(b)(1)	83	5 days	7 days
27.	6004-1(c)(4)(A)	85	15 days	14 days
28.	6004-1(d)(2)(A), (C) & (D)	85-86	15 days	14 days
29.	6004-1(d)(3)	86	20 days; 11 days	21 days; 14 days
30.	6004-1(e)	86	15 days	14 days
31.	6004-1(e)(3) & (4)	86	15 days	14 days
32.	6004-1(e)(5)	86	20 days; 11 days	21 days; 14 days
33.	6004-1(g)	87	20 days	21 days
34.	6007-1(c)(1)	87	15 days	14 days
35.	6007-1(e)	88	20 days; 11 days	21 days; 14 days
36.	7016-1(a)(3)	91	10 days	7 days
37.	7016-1(c)(2)	93	5th day	7th day
38.	7026-1(c)(2)	95	10 days	7 days
39.	7026-2(d)(2)	96	10 days	14 days
40.	7030-1(b)(1)	97	10 days	7 days
41.	7030-1(b)(4)	98	5 days	7 days
42.	7054-1(e)	100	5 days	7 days
43.	7056-1(d)	103	10 days	14 days
44.	7065-1(b)(3)	104	10 days	14 days
45.	8003-1(d)	107	10 days	14 days
46.	8003-1(f)(1)	108	5 days	7 days
47.	9013-1(o)(1)(A)(ii)	121	15 days	14 days
48.	9013-1(o)(4)	123	20 days; 11 days	21 days; 14 days
49.	9013-2(a)(1)	123	5 days	7 days
50.	9013-3(g)	126	5 days	7 days
51.	9015-1(b)(1)	128	5 days	7 days
52.	9015-1(d)(1)	128	5 days	7 days
53.	9015-2(b)(2) & (3)	129	10 days	14 days
54.	9015-2(h)(1) & (2)	130	5 days	7 days
55.	9020-1(b)	131	5 days	7 days
56.	9021-1(c)(4) & (5)	135	5 days	7 days
57.	9027-1(b)(3)	136	5 days	7 days
58.	9027-1(d)(2)(B)	136	10 days	14 days
59.	9027-1(e)	137	10 days	14 days

C. General Orders (LBR Appendices II & III) Revised to Comply with Statutory Time Periods Technical Amendments Act:

<u>General Order # 96-05</u>	<u>Current Time Period</u>	<u>New Time Period</u>
p.2, 1.1	ten days	14 days
p.2, 1.7	10 calendar days	14 days
p.2, 1.13	21 calendar days	21 days
p.2, 1.30	11 days	14 days
p.2, 1.33	five court days	7 days
p.3, 1.12	10 days	14 days
p.3, 1.12-13	10 days	14 days
p.4, 1.17	10 days	14 days

<u>Second Amended General Order # 95-01</u>	<u>Current Time Period</u>	<u>New Time Period</u>
§ 7.2, 1.4	7 calendar days	7 days
§ 7.3, 1.4	7 calendar days	7 days
§ 7.4(a), 1.1	7 calendar days	7 days
§ 7.5, 1.1	15 calendar days	14 days
§ 7.6, 1.1	15 calendar days	14 days
§ 7.6, 1.4	30 calendar days	30 days
§ 7.6(a), 1.2	30 calendar days	30 days
§ 7.8, 1.3	5 court days	7 days
§ 8.1(b), 1.1-2	10 calendar days	14 days

LBR 1001-1. TITLE, APPLICATION, AND SCOPE OF RULES

- (a) **Title and Citation.** These are the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (hereinafter, “Local Bankruptcy Rules” or “rules”). They may be cited as “LBR _____.”
- (b) **Application and Construction.**
 - (1) The Local Bankruptcy Rules are adopted pursuant to 28 U.S.C. § 2075, F.R.Civ.P. 83, and FRBP 9029. They are intended to supplement the FRBP and those portions of the F.R.Civ.P. that are incorporated by the FRBP. The Local Bankruptcy Rules are to be construed consistent with, and subordinate to, the FRBP and F.R.Civ.P. and to promote the just, speedy, and economic determination of every case and proceeding.
 - (2) The Local Bankruptcy Rules apply to all bankruptcy cases and proceedings (including all cases removed pursuant to 28 U.S.C. § 1452 or 15 U.S.C. § 78eee) pending in the United States Bankruptcy Court for the Central District of California.
 - (3) The Local Bankruptcy Rules apply in the United States District Court for the Central District of California in lieu of the District Court Rules when the district court is exercising its original bankruptcy jurisdiction pursuant to 28 U.S.C. § 1334.
- (c) **Application to Persons Appearing Without Counsel.** A person who appears and is not represented by counsel must comply with the Local Bankruptcy Rules. Each reference in the Local Bankruptcy Rules to “attorney” or “counsel” applies equally to a party who is not represented by counsel, unless the context otherwise requires.
- (d) **Modification.** The Local Bankruptcy Rules apply uniformly throughout the district, but are not intended to limit the discretion of the court. The court may waive the application of any Local Bankruptcy Rule in any case or proceeding, or make additional orders as it deems appropriate, in the interest of justice.
- (e) **Procedure in Absence of Rule.**
 - (1) A matter not specifically covered by these Local Bankruptcy Rules may be determined, if possible, by parallel or analogy to the F.R.Civ.P., the FRBP, or the District Court Rules.
 - (2) If no parallel or analogy exists, then the court may proceed in any lawful manner not inconsistent with these Local Bankruptcy Rules and the FRBP.
- (f) **Sanctions for Noncompliance with Rules.** The failure of counsel or of a party to comply with these Local Bankruptcy Rules, with the F.R.Civ.P. or the FRBP, or with any order of the court may be grounds for the imposition of sanctions.
- (g) **Effective Date.** These LBRs are effective on January 5, 2009, and will govern all cases and proceedings pending or commenced thereafter. The court in its discretion may order that a

case or proceeding pending prior to the effective date be governed by the practice of the court prior to the adoption of these LBRs.

LBR 1001-2. RULES OF CONSTRUCTION

- (a) **Construction of Terms.** As used in these rules –
 - (1) “must” is mandatory.
 - (2) “must not” is prohibitive, not permissive.
 - (3) “may” is discretionary.
 - (4) “or” is not exclusive.
 - (5) “includes” and “including” are not limiting.
- (b) **Gender; Plurals.** Wherever applicable, each gender includes the other gender and the singular includes the plural.

LBR 1002-1. PETITION – GENERAL

- (a) **Debtor’s Address.** In a petition filed under 11 U.S.C. §§ 301, 302, 303, or 1504, the debtor’s actual street address must be disclosed in addition to any post office box address.
- (b) **Attorney Information.**
 - (1) **General.** A voluntary petition filed pursuant to 11 U.S.C. §§ 301 and 302 by an attorney on behalf of any party must contain the attorney’s state bar identification number, telephone number, fax number, and e-mail address in the attorney name block.
 - (2) **Signature of Counsel.** The name of the attorney signing a petition must be printed clearly below the signature line.
- (c) **Number of Copies.** For documents that are not electronically filed under the provisions of LBR 5005-4, a list of requirements that specify the minimum number of copies that must be submitted is contained in the Court Manual available from the clerk and on the court’s website.
- (d) **Incomplete Petitions.**
 - (1) **General.** A voluntary petition filed without the complete schedules, statements and other documents required by the FRBP and these rules must include at least the following:
 - (A) Petition (Official Form 1);

- (B) List of Creditors Holding 20 Largest Unsecured Claims (Official Form 4) (chapter 11 cases only);
- (C) Master Mailing List (List of Creditors) in format required by LBR 1007-1(a); and
- (D) Statement of Social Security Number(s) (Official Form 21) (Required if the debtor is an individual).

A complete list of the papers required to complete the filing is contained in the Court Manual available from the clerk and on the court's website.

- (2) Deadline to File Required Documents. Except as provided by FRBP 1019(1)(A), and unless extended by court order, the balance of the papers required by the FRBP and these rules must be filed within ~~15~~ 14 days of the petition date, except the Statement of Intention which must be filed not later than 30 days after the filing of the petition.
- (3) Motion for Extension of Time to File Documents. A motion for extension of time to file the lists, schedules and other papers required by this rule must comply with LBR 1007-1(e).
- (4) Failure to File Required Documents. The case may be dismissed pursuant to LBR 1017-2.

(e) **Redaction of Personal Identifiers.**

- (1) Unless otherwise ordered by the court, a debtor must refrain from including, or must redact where inclusion is necessary, the following personal identifiers from all lists, schedules, statements, payment advices, or other documents filed or required to be filed with the court in accordance with FRBP 9037(a):
 - (A) Social Security Numbers. If disclosure of a social security number is required, only the last four digits of that number should be used. [This does not apply to Official Form 21, Statement of Social Security Number(s)].
 - (B) Names of Minor Children. If disclosure of the identity of any minor child is required, only the initials of that child should be used.
 - (C) Date of Birth. If disclosure of an individual's date of birth is required, only the year should be used.
 - (D) Financial Account Numbers. If disclosure of any financial account number is required, only the last four digits of that number should be used.
- (2) The responsibility for redacting these personal identifiers rests solely with the debtor and debtor's counsel. The court will not review documents for compliance with this rule.

(f) Effect of Failure to Specify Necessary Information.

- (1) If the petition fails to specify the chapter under which relief is sought, the case will be deemed to have been filed under chapter 7.
- (2) If the petition fails to specify whether it is a consumer or business case, it will be presumed to be a consumer case.
- (3) 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.

(g) Joint Petitions. Individuals filing jointly must present upon request appropriate evidence to support their joint filing status at the 11 U.S.C. § 341(a) meeting, such as a copy of the marriage license.

LBR 1006-1. FILING FEES

(a) Payment of the Filing Fee in Installments.

- (1) Eligibility. Only an individual debtor who is unable to pay the full filing fee for a voluntary petition under chapter 7, 11, or 13, may apply for permission to pay the filing fee in installments. A corporation, partnership, limited liability company, unincorporated association, trust, or other artificial entity must pay the filing fee in full at the time the petition is filed.
- (2) Application. The debtor must submit a written application for an order permitting payment of the filing fee in installments. The application must be accompanied by a declaration under penalty of perjury establishing that the debtor is unable to pay the filing fee except in installments. The application and declaration must be completed on forms prescribed by the court and presented for filing with the petition. If unrepresented by an attorney, or if required by the court, the debtor must also present evidence of personal identification in the form of a valid government-issued driver's license or identification card, or other similar form of identification satisfactory to the clerk.
- (3) Hearing. On the petition date or at a later date and time the designated judge may select for a hearing, the debtor must appear personally before a designated judge to present the application, supporting declaration, and proposed order. The debtor must provide sworn testimony regarding the basis for the application and circumstances of the bankruptcy filing. Unless the court specifically waives the requirement of personal appearance, the debtor's failure to appear and testify at the prescribed time and place will result in denial of the application and dismissal of the bankruptcy case.
- (4) Notice. Compliance with the notice and service requirements of LBR 9013-1 is not required, unless otherwise ordered by the designated judge.

- (5) Order. An order authorizing payment of filing fee in installments must fix the number of installments and the amount and due date of each installment. The number of installments must not exceed 4. The final installment is payable not later than 120 days after the filing of the petition, unless extended by the court for cause shown to a date not later than 180 days after the petition date. The first payment must be at least \$30, unless otherwise ordered by the court.
- (6) Dismissal for Nonpayment. The debtor's failure to pay any installment when due may result in dismissal of the case after notice and hearing.

(b) Waiver of Chapter 7 Filing Fee.

- (1) Eligibility. Only an individual debtor may file an application to waive the filing fee in a chapter 7 case.
- (2) Application. The debtor must submit a written application for an order waiving payment of the filing fee in a chapter 7 case. The application must be accompanied by a declaration under penalty of perjury establishing that the debtor qualifies for a waiver and is unable to pay the filing fee. The application and declaration must be completed on forms prescribed by the court and presented for filing with the petition. If unrepresented by an attorney, or if required by the court, the debtor must also present evidence of personal identification in the form of a valid government-issued driver's license or identification card, or other similar form of identification satisfactory to the clerk.
- (3) Hearing. On the petition date or at a later date and time the designated judge may select for a hearing, the debtor must appear personally before a designated judge to present the application, supporting declaration, and proposed order. The debtor must provide sworn testimony regarding the basis for the application and circumstances of the bankruptcy filing. Unless the court specifically waives the requirement of personal appearance, the debtor's failure to appear and testify at the prescribed time and place will result in denial of the application and dismissal of the bankruptcy case.
- (4) Notice. Compliance with the notice and service requirements of LBR 9013-1 is not required, unless otherwise ordered by the designated judge.
- (5) Order. An order denying an application to waive the chapter 7 filing fee may provide for payment of the filing fee in installments pursuant to LBR 1006-1(a)(5).

LBR 1007-1. LISTS, SCHEDULES, AND STATEMENTS

(a) Master Mailing List.

- (1) A master mailing list must be filed with the petition in the format specified in the Court Manual available from the clerk and on the court's website.
- (2) Unless otherwise ordered, the master mailing list must include the name, mailing address, and zip code of each creditor listed on Schedules D, E, and F.

- (b) **Amendment of Master Mailing List.** When an addition or change is required to the master mailing list, a supplemental master mailing list, in the required format, containing only the newly added or changed creditors must be filed. The supplement must not repeat those creditors listed on the original master mailing list.
- (c) **Partnerships, Corporations, and Limited Liability Companies.** If the debtor is a partnership, corporation, or limited liability company, the master mailing list must include the name and address of each general partner, senior corporate officer, or managing member. A list of all limited partners, shareholders, or other equity holders must be provided either as part of the master mailing list or as a separate “Equity Holders’ Mailing List.” The Equity Holders’ Mailing List must comply with the format requirements of subsection (a) of this rule.
- (d) **Verification of Completeness and Accuracy.**
- (1) The debtor, or such other person as the court may order, is responsible for the accuracy and completeness of the master mailing list, any supplement to the master mailing list, and the Equity Holders’ Mailing List.
 - (2) The master mailing list and any supplement thereto must be accompanied by a declaration by the debtor or debtor’s counsel attesting to the completeness and correctness of the list.
 - (3) If the master mailing list or any supplement thereto is submitted in a court-approved electronic format and the electronic file is prepared by someone other than the debtor or debtor’s counsel, a further declaration must be submitted by the preparer to attest to the accuracy of the electronic file as it relates to the information provided by the debtor or debtor’s counsel.
 - (4) The clerk will not compare the names and addresses of the creditors listed in the schedules with the names and addresses shown on the master mailing list or any supplement thereto.
- (e) **Extension of Time to File Schedules, Statements, and Other Documents.**
- (1) A motion for an extension of time to file the lists of creditors and equity security holders, or to file the schedules, statements, and other documents must comply with FRBP 1007(c).
 - (2) The motion must be accompanied by evidence demonstrating cause for the requested extension of time.

LBR 1007-4. DISCLOSURE OF CORPORATE RELATIONSHIPS

- (a) **Mandatory Statement.** A debtor that is a corporation, other than a governmental unit, must file with the petition a corporate ownership statement that either identifies any corporation, other than a governmental unit, that directly or indirectly owns 10% or more of any class of the debtor corporation’s equity interests or states that there are no such entities to report.

- (b) **Supplemental Statement.** The debtor must file a supplemental statement promptly upon any change in circumstances that this rule requires the debtor to identify or disclose.

LBR 1010-1. INVOLUNTARY PETITIONS

The court may dismiss an involuntary petition *sua sponte* if the petitioner fails to (a) serve the summons and petition within the time allowed by FRBP 7004; (b) file a proof of service of the summons and petition with the court; or (c) appear at the status conference set by the court.

LBR 1015-1. CONSOLIDATION AND JOINT ADMINISTRATION

- (a) **Joint Cases.** A joint case commenced for spouses by the filing of a single petition under 11 U.S.C. § 302(a) will be deemed substantively consolidated unless the court orders otherwise.
- (b) **Joint Administration of Cases Pending in the Same Court.**
- (1) If 2 or more cases are pending before the same judge, an order of joint administration may be entered, without notice and an opportunity for hearing, upon the filing of a motion for joint administration pursuant to FRBP 1015, supported by a declaration establishing that the joint administration of the cases is warranted, will ease the administrative burden for the court and the parties, and will protect creditors of the different estates against potential conflicts of interest.
 - (2) An order for joint administration under this rule may be reconsidered upon motion by a party in interest after notice and a hearing.
 - (3) An order of joint administration under this rule is for procedural purposes only and shall not effect a substantive consolidation of the respective debtors' estates.
- (c) **Joint Administration/Substantive Consolidation.** A motion for joint administration or for substantive consolidation must include a motion under LBR 1073-1 to transfer the assignment of the cases to be jointly administered or substantively consolidated if those cases are not all assigned to one judge.

LBR 1015-2. RELATED CASES

- (a) **Definition of Related Cases.** For purposes of this rule, cases are deemed “related cases” if the earlier bankruptcy case was filed or pending at any time before the filing of the new petition, and the debtors in such cases:
- (1) Are the same;
 - (2) Are spouses, former spouses, domestic partners, or former domestic partners;
 - (3) Are “affiliates,” as defined in 11 U.S.C. § 101(2), except that 11 U.S.C. § 101(2)(B) shall not apply;
 - (4) Are general partners in the same partnership;

- (5) Are a partnership and one or more of its general partners;
- (6) Are partnerships that share one or more common general partners; or
- (7) 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 estate under 11 U.S.C. § 541(a), § 1115, § 1207, and/or § 1306.

(b) Disclosure of Related Cases.

- (1) A petition commencing a case must be accompanied by court-mandated form F 1015-2.1, Statement of Related Cases.
- (2) The petitioner must execute court-mandated form F 1015-2.1 under penalty of perjury disclosing, to the petitioner's best knowledge, information and belief, whether a related case was filed or has been pending at any time and if so, for each such related case:
 - (A) The name of the debtor in the related case;
 - (B) The case number of the related case;
 - (C) The district and division in which the related case is or was pending;
 - (D) The judge to whom the related case was assigned;
 - (E) The current status of the related case;
 - (F) The manner in which the cases are related; and
 - (G) The real property, if any, listed in the Schedule A that was filed in the related case.
- (3) The failure to provide complete and accurate information in court-mandated form F 1015-2.1 may subject the petitioner and its attorney to appropriate sanctions, including the appointment of a trustee or dismissal of the case with prejudice.

LBR 1017-1. CONVERSION

(a) Conversion Upon Debtor's Request.

- (1) A debtor's notice of conversion under 11 U.S.C. §§ 1208(a) or 1307(a) must be filed and served on the standing trustee and United States trustee. No hearing is required for conversion.
- (2) A debtor must request conversion under 11 U.S.C. § 1112(a) by motion filed and served as required by FRBP 9013, but the motion does not require a hearing.

- (3) A debtor must request conversion under 11 U.S.C. § 706(a) to a case under chapter 11, 12 or 13 by motion which, unless otherwise ordered by the court, may be granted only after notice of opportunity to request a hearing to the trustee, attorney for the trustee (if any), United States trustee, and parties in interest, as provided in LBR 9013-1(o).
- (4) If the case is converted, the clerk will give notice of the order converting the case to another chapter to all creditors and interested parties and to the United States trustee.

(b) Additional Fees Upon Conversion of a Case.

- (1) A notice of conversion or motion for conversion, as the case may be, of a case must be accompanied by payment of the filing fee, if any, required for conversion of the case to the chapter for which conversion is sought.
- (2) If a conversion to chapter 11 is denied, the filing fee paid when the motion was filed will be refunded to the payor upon written request to the Fiscal Department of the clerk's office. A conformed copy of the order denying the conversion to chapter 11 must be attached to the request for refund.
- (3) If a conversion to chapter 7 is denied, the filing fee paid when the motion was filed will not be refunded.

LBR 1017-2. DISMISSAL OF CASE OR SUSPENSION OF PROCEEDINGS

(a) Dismissal for Failure to File Documents.

- (1) Cause for Dismissal. The failure of the petitioner to file in a timely manner any document required by the Bankruptcy Code, the FRBP, and these rules is cause for dismissal of the case.
- (2) Notice of Proposed Dismissal. If a petition is filed without all of the documents required by the Bankruptcy Code, the FRBP, and these rules, the clerk will issue a notice to the petitioner that identifies each of the deficiencies and states that the case will be dismissed without further notice or hearing if the documents listed in the notice, or a request for extension of time within which to file the required documents, are not filed within ~~15~~ 14 days from the filing of the petition.
- (3) Dismissal Without Further Notice. If the required documents are not filed within ~~15~~ 14 days from the filing of the petition or an extension of such ~~15~~ 14-day period granted by an order of the court, the case will be dismissed without further notice or hearing.

(b) Dismissal of Chapter 7 Case for Failure to Attend Meeting of Creditors. The failure of a chapter 7 debtor to appear at the initial meeting of creditors and any continuance thereof is cause for dismissal of the case. The court will dismiss the case upon the trustee's request for dismissal and certification that the debtor has failed to appear at two meetings of creditors.

- (c) **Notice of Dismissal.** The clerk will provide notice of an order dismissing a case under this rule to the debtor, debtor’s attorney (if any), United States trustee, and parties in interest.

- (d) **Reinstatement.**
 - (1) A case dismissed for the failure to timely file a required document or for failure to appear at the meeting of creditors may be reinstated on motion of the petitioner pursuant to FBRP 9024, provided that all required documents are filed, or on motion of another party.
 - (2) In the event a case is reinstated, the court may impose such sanctions as it deems just and reasonable.

- (e) **Refiling of Dismissed Case.** A petitioner who files a petition following the dismissal of a case must disclose the dismissed case pursuant to LBR 1015-2.

- (f) **Motion to Dismiss or Suspend Proceedings.**
 - (1) A motion by the debtor to dismiss a case filed under 11 U.S.C. §§ 301 or 302, a motion by creditors or the debtor to dismiss an involuntary case filed under 11 U.S.C. § 303, or a motion to suspend all proceedings under 11 U.S.C. § 305 must be supported by a declaration setting forth the reasons for the request for dismissal or suspension.
 - (2) The declaration in support of the motion must disclose any arrangement or agreement between the debtor and creditors or any other person in connection with the motion for dismissal or suspension.
 - (3) The court may condition the dismissal upon payment of fees and expenses, including fees due to the United States trustee.

LBR 1071-1. DIVISIONS – PLACE OF FILING

- (a) **Filing of Petition.** Unless otherwise ordered by the court, a petition commencing a case under the Bankruptcy Code must be filed with the Clerk of the United States Bankruptcy Court for the Central District of California in the “applicable division.”
 - (1) The “applicable division” is determined by the location of the debtor’s residence, principal offices, officers, and books and records, or where the majority of the debtor’s assets are located based on a book value determination as set forth on the debtor’s most current balance sheet.
 - (2) Information concerning the “applicable division” for the filing of the petition is contained in the Court Manual available from the clerk and on the court’s website.

- (b) **Petition Filed in Wrong Division.** If a petition is filed in the wrong division, the court may, on its own, transfer it to the appropriate division or retain the case.

- (c) **Filing of Papers Other Than a Petition.** Papers other than a petition must be filed only in the divisional office of the clerk to which the relevant case or proceeding has been assigned. However, the clerk may, by special waiver or upon order of the court, accept papers in any office of the clerk irrespective of division.

LBR 1073-1. ASSIGNMENT OF CASES

- (a) **New Petitions.** Unless otherwise ordered by the court, a new petition commencing a case must be assigned by the clerk according to a random draw so that neither the clerk, the parties, nor their attorneys is able to make a deliberate choice of a particular judge.
- (b) **Assignment or Reassignment of Related Cases and Proceedings.** The court will assign or reassign related cases or proceedings pursuant to the procedures established by the court's General Orders.
- (c) **Motion for Reassignment or Consolidation of Related Cases.**
 - (1) A motion by a party in interest for reassignment or consolidation of related bankruptcy cases or adversary proceedings must be made to the judge to whom the low-numbered case is assigned.
 - (2) The motion must be filed and served in accordance with LBR 9013-1(o). Notice must be given to the debtor or debtor in possession, the trustee (if any), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002. Notice of a motion seeking the reassignment or consolidation of an adversary proceeding must be given to each party named in the adversary proceeding. A judge's copy of the motion must be served in chambers on the higher-numbered judge.
 - (3) An order reassigning a related case pursuant to LBR 1015-2 must be titled "Order of Reassignment Pursuant to LBR 1015-2," and must be promptly filed with the clerk and entered by the clerk on the docket. Notice of the order must be given to all parties who are entitled to notice of the order for relief pursuant to FRBP 2002(d)(1) and (f)(1), and to the judge to whom the high-numbered case is assigned.
- (d) **Reassignment of Cases or Proceedings Due to Recusal.**
 - (1) The court will reassign a case or proceeding due to recusal pursuant to the procedures established by the court's General Orders.
 - (2) Upon recusal of an assigned judge of an entire case, an adversary proceeding, contested matter, or other single matter within a case, the recused case, proceeding or matter will be reassigned by the clerk to another judge by random draw.

- (e) **Assignment of Miscellaneous Matters.** Whenever action is required on a miscellaneous matter for which there is no bankruptcy case pending in this district, the clerk will assign the matter by random draw.

- (f) **Nonlimitation of Applicability.** A judge may assign any case or adversary proceeding to another judge.

LBR 2002-1. NOTICE TO AND SERVICE UPON CREDITORS AND OTHER INTERESTED PARTIES**(a) Request for Special Notice.**

- (1) Form. A person or entity filing a request for notices served pursuant to FRBP 2002 must include in the request for special notice: (A) name of the person or entity requesting notice; (B) mailing address, including street address for overnight delivery or personal service; (C) telephone number; (D) facsimile number; (E) e-mail address; (F) name of the person or entity represented, if any; (G) a statement that the requesting party is a creditor and/or equity security holder of the debtor and notice is requested on the basis of the court having limited notice to a committee; and (H) a statement that the request is limited to notices required to be provided under FRBP 2002(a)(2), (a)(3), and (a)(6) and does not include any moving or responsive or reply papers, any evidence, or any proposed orders or entered orders.
- (2) Consent to Electronic Service. Subject to the provisions of LBR 9036-1, a creditor or equity security holder of the debtor filing a request for special notice under subsection (a)(1) of this rule is deemed to consent to receive electronic notice and service from the clerk and parties in interest in the case or proceeding.

- (b) Mailing List in Chapter 9 and 11 Cases.** In chapter 9 and 11 cases only, the debtor in possession or trustee must maintain a current mailing list of entities who have served a request for notice pursuant to FRBP 2002 and must promptly furnish a copy of that list upon the request of any creditor or other interested party.

LBR 2002-2. NOTICE TO AND SERVICE UPON THE UNITED STATES OR FEDERAL AGENCIES**(a) United States Trustee.**

- (1) Duty to Provide Notice to and Service Upon the United States trustee. Pursuant to FRBP 2002(k), FRBP 9034 and these rules, and unless otherwise directed, a copy of any paper filed by a person or entity in a bankruptcy case or adversary proceeding under chapters 7, 9, or 11 must be served upon the United States trustee. Proofs of claim or copies thereof must not be served upon the United States trustee. In chapter 12 or 13 cases, only a notice of conversion or motion to convert the case to another chapter must be served upon the United States trustee.
- (2) Consent to Electronic Notice and Service of Papers Filed with the Court. Notwithstanding subsection (a)(1) of this rule, and except as provided in subsection (a)(3) of this rule, the United States trustee consents to electronic notice and service of any paper filed in a bankruptcy case or adversary proceeding.
 - (A) Electronic Notice. The electronic transmission to the United States trustee of an NEF or a notice through the Bankruptcy Noticing Center constitutes

notice to the United States trustee of a paper filed in a bankruptcy case or adversary proceeding, including notice of entry of an order or judgment, whether it is the duty of the clerk or another person or entity to give such notice. A proof of service prepared and filed pursuant to LBR 9013-3 must state that the United States trustee will be served electronically by the court.

- (B) Electronic Service. The electronic transmission to the United States trustee of an NEF regarding a paper filed in a bankruptcy case or adversary proceeding, which is required to be served on the United States trustee pursuant to FRBP 2002(k), FRBP 9022, FRBP 9034 or these rules, constitutes service of the paper on the United States trustee. A proof of service prepared and filed pursuant to LBR 9013-3 must state that the United States trustee will be served electronically by the court.
- (3) Exceptions to Electronic Notice and Service. Notwithstanding the foregoing and in addition to the exceptions to electronic notice and service set forth in LBR 9036-1(b), the following papers must be served on the United States trustee non-electronically:
- (A) A paper exceeding 50 pages in length, including exhibits;
- (B) A matter to be heard as an emergency motion or on shortened time pursuant to LBR 9075-1, and any response thereto;
- (C) Any paper filed ~~within 10~~ less than 14 days of the date of the hearing;
- (D) Proposed orders or judgments if required to be served on the United States trustee under LBR 9021-1(b);
- (E) Complaints served upon the United States trustee as a defendant. Persons and entities must comply with FRBP 7004(b)(10) when the United States trustee is named in an adversary proceeding as a party, whether or not the United States trustee is a trustee in the case;
- (F) Any paper served upon the United States trustee and/or any of the United States trustee's staff in their capacity as individuals. The service of any such filing must be made in compliance with Rule 4 of the F.R.Civ.P. and with any and all other applicable rules of civil, bankruptcy and/or appellate procedure; and
- (G) Any other document specified in the court's CM/ECF Procedures.
- (4) Notice of Emergency Motion and Hearing Held on Shortened Notice. Telephonic notice of an emergency motion or hearing set on shortened notice must be given to the United States trustee if the United States trustee would otherwise be entitled to notice of the type of motion or hearing.

- (5) Place of Service for Non-electronic Notice or Service. The United States trustee must be included in the master mailing list. For papers for which the United States trustee has not consented to electronic notice and service, the United States trustee must be served non-electronically at the applicable mailing address listed in the Register of Federal and State Governmental Unit Addresses contained in the Court Manual available from the clerk and on the court's website.
- (b) United States Attorney. The United States attorney for this district has waived notice under FRBP 2002(j). If notice is required in a case or proceeding, the United States attorney must file a request for special notice with the court and serve the debtor, debtor's attorney (if any), the United States trustee, any trustee, and the representatives of any committee appointed in a case.
- (c) Internal Revenue Service.
- (1) General Notice Matters. Except with respect to contested matters or adversary proceedings (where service must comply with the requirements of FRBP 7004 and LBR 2002-2(c)(2)), or as otherwise ordered by the court, the United States Internal Revenue Service must be served at the address listed in the Register of Federal and State Governmental Unit Addresses contained in the Court Manual available from the clerk and on the court's website.
- (2) Adversary Proceedings and Contested Matters. In all contested matters and adversary proceedings involving the United States Internal Revenue Service, the United States, the Attorney General in Washington, D.C., and the United States attorney in Los Angeles must be served at addresses listed in the Register of Federal and State Governmental Unit Addresses contained in the Court Manual available from the clerk and on the court's website.

LBR 2004-1. MOTIONS FOR EXAMINATION UNDER FRBP 2004

- (a) Conference Required. Prior to filing a motion for examination or for production of documents under FRBP 2004, the moving party must attempt to confer (in person or telephonically) with the entity to be examined, or its counsel, to arrange for a mutually agreeable date, time, place, and scope of an examination or production.
- (b) Motion. A motion for examination under FRBP 2004 must be filed stating the name, place of residence, and the place of employment of the entity to be examined, if known. The motion must include a certification of counsel stating whether the required conference was held and the efforts made to obtain an agreeable date, time, place, and scope of an examination or production. The motion must also explain why the examination cannot proceed under FRBP 7030 or 9014.
- (c) Notice and Service. The motion must be served on the debtor, debtor's attorney (if any), the trustee (if any), the United States trustee, and the entity to be examined. Not less than 21 days notice of the examination must be provided, calculated from the date of service of the motion, unless otherwise ordered by the court.

- (d) **Order.** Unless otherwise ordered by the court, an order for examination will be granted without a hearing.
- (e) **Subpoena.** If the court approves a Rule 2004 examination of an entity other than the debtor, the attendance of the entity for examination and for the production of documents must be compelled by subpoena issued and served pursuant to FRBP 9016 and F.R.Civ.P. 45.
- (f) **Protective Order.** The party whose examination is requested may file a motion for protective order if grounds exist under FRBP 7026 and F.R.Civ.P. 26(c). A motion for protective order must be filed and served not less than ~~11~~ 14 days before the date of the examination, and set for hearing not less than 2 days before the scheduled examination, unless an order shortening time is granted by the court pursuant to LBR 9075-1. The parties may stipulate, or the court may order, that the examination be postponed so that the motion for protective order can be heard on regular notice under LBR 9013-1.
- (g) **Disputes.** The parties must seek to resolve any dispute arising under this rule in accordance with LBR 7026-1(c).

LBR 2010-1. BONDS OR UNDERTAKINGS

- (a) **Bonds, Undertakings, Approval, Third-party Sureties, Security, and Qualification.**
 - (1) **Approval.** The clerk is authorized to approve on behalf of the court all bonds, undertakings, and stipulations of security given in the form and amount prescribed by statute, order of the court, or stipulation of counsel, which comply with the requirements of this rule and contain a certificate by an attorney, as set forth below, except where the approval of a judge is specifically required by law.
 - (2) **Third-party Sureties.** No bond or undertaking requiring third-party sureties will be approved unless it bears the names and addresses of sufficient third-party sureties and is accompanied by a declaration by the surety stating that:
 - (A) The surety is a resident of the State of California;
 - (B) The surety who intends to deed real property as security owns the real property within the State of California;
 - (C) The security posted by the surety is worth the amount specified in the bond or undertaking, over and above just debts and liabilities; and
 - (D) The property, real or personal, which is to be conveyed as security is not exempt from execution and prejudgment attachment.

If specifically approved by the court, real property in any other state of the United States may be part of the surety's undertaking.

surety, the court may upon ~~10~~ 14 days notice proceed summarily and render a judgment in accordance with the obligation undertaken and issue a writ of execution upon that judgment.

- (2) An indemnitee or party in interest seeking a judgment on a bond or undertaking must proceed by Motion for Summary Adjudication of Obligation and Execution. The motion must be served on a personal surety in the manner provided in F.R.Civ.P. 5(b). A corporate surety must be served in accordance with 31 U.S.C. § 9306.
- (e) **Bonds of Trustees.** A bond required by a trustee under 11 U.S.C. § 322 is exempt from this rule. The United States trustee must set the amount of such bond and approve the sufficiency of the surety.

LBR 2014-1. EMPLOYMENT OF DEBTOR AND PROFESSIONAL PERSONS

(a) Employment of Debtor's Principals or Insiders in Chapter 11 Cases.

- (1) **Notice of Setting/Increasing Insider Compensation.** No compensation or other remuneration may be paid from the assets of the estate to a debtor's owners, partners, officers, directors, shareholders, or relatives of insiders as defined by 11 U.S.C. § 101(31), from the time of the filing of the petition until the confirmation of a plan nor may approved compensation be increased unless the debtor serves a Notice of Setting/Increasing Insider Compensation ("Notice") in accordance with procedures adopted by the United States trustee pursuant to this rule.
- (2) **Service of Notice.** The debtor must: (A) serve the Notice on the United States trustee, the creditors' committee or the 20 largest creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, and any secured creditor that claims an interest in cash collateral, and (B) provide proof of service to the United States trustee. As a non-filed document, the Notice does not result in the generation and delivery of an NEF, and therefore consent to electronic service via NEF on the United States trustee and other CM/ECF Users is not applicable to the Notice.
- (3) **Payment of Insider Compensation.** An insider may receive compensation or other remuneration from the estate if no objection is received within ~~15~~ 14 days after service of the Notice. An insider may receive an increase in the amount of insider compensation or other remuneration previously approved if no objection is received within 30 days after service of the Notice.
- (4) **Objection and Notice of Hearing.** If an objection is timely received, the debtor must set the matter for hearing. The debtor must file a true and correct copy of the Notice, objection, and the original notice of hearing. The debtor must serve not less than ~~20~~ 21 days notice of the date and time of the hearing on the objecting party and the United States trustee.

(b) Employment of Professional Person.**(1) Application for Employment.**

- (A) An application seeking approval of employment of a professional person pursuant to 11 U.S.C. §§ 327, 328, 1103(a), or 1114 must comply with the requirements of FRBP 2014 and 6003(a) and be filed with the court. The application must specify unambiguously whether the professional seeks compensation pursuant to 11 U.S.C. § 328 or 11 U.S.C. § 330.
- (B) The application must be accompanied by a declaration of the person to be employed establishing disinterestedness or disclosing the nature of any interest held by such person.
- (C) The United States trustee must be served, in accordance with LBR 2002-2(a), with a copy of the application and supporting declaration not later than the day it is filed with the court. No hearing is required unless requested by the United States trustee or a party in interest, or as otherwise ordered by the court.
- (D) A chapter 7 trustee who seeks authorization to act as attorney or accountant for the estate, or to employ the trustee's firm in such capacity, must explain why such employment is in the best interests of the estate.
- (E) A timely application for employment is a prerequisite to compensation from the estate. Therefore, an application for the employment of counsel for a debtor in possession should be filed as promptly as possible after the commencement of the case, and an application for employment of any other professional person should be filed as promptly as possible after such person has been engaged.
- (F) The substitution of an attorney must also comply with LBR 2091-1(b).

(2) Notice of Application.

- (A) Notice of an application by the debtor (if such application is required), debtor in possession, or trustee, to retain a professional person must be filed and served, in accordance with LBR 2002-2(a) and LBR 9036-1, on the United States trustee, the debtor (if a trustee has been appointed), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, and any other party in interest entitled to notice under FRBP 2002.
- (B) Notice of an application by a committee to retain a professional person must be filed and served, in accordance with LBR 2002-2(a) and LBR 9036-1, on the United States trustee, debtor or debtor in possession, the trustee (if appointed), and their counsel.

- (C) The notice must be filed and served not later than the day the application is filed with the court.
 - (3) Content of Notice. The notice must:
 - (A) State the identity of the professional and the purpose and scope for which it is being employed;
 - (B) State whether the professional seeks compensation pursuant to 11 U.S.C. § 328 or 11 U.S.C. § 330;
 - (C) Describe the arrangements for compensation, including the hourly rate of each professional to render services, source of the fees, the source and amount of any retainer, the date on which it was paid, and any provision regarding replenishment thereof;
 - (D) Provide a name, address, and telephone number of the person who will provide a copy of the application upon request; and
 - (E) Advise the recipient that any response and request for hearing, in the form required by LBR 9013-1(f)(1), must be filed and served on the applicant (and counsel, if any), and the United States trustee not later than ~~15~~ 14 days from the date of service of the notice.
 - (4) No Response and Request for Hearing. If the response period expires without the filing and service of a response and request for hearing, the applicant must promptly comply with LBR 9013-1(o)(3), except that:
 - (A) The proposed order and declaration must be served only on the United States trustee; and
 - (B) The Notice of Entered Order and Service List must limit service by the court to the debtor or debtor in possession, trustee (if any), the creditor's committee, any other committee appointed in the case, counsel for any of the foregoing, and the United States trustee.
 - (5) Response and Request for Hearing Filed. If a timely response and request for hearing is filed with the court and served upon the applicant and the United States trustee, the applicant must comply with LBR 9013-1(o)(4).
- (c) **Reconsideration of Employment Terms.**
- (1) If the court approves the terms of a professional's employment, including a fee based on an the hourly rate, fixed or percentage fee, contingency or success fee, or a combination thereof, the court will not reconsider such terms of employment at a subsequent time except as provided in 11 U.S.C. § 328(a).
 - (2) Notwithstanding the foregoing, the court may exercise its discretion pursuant to 11 U.S.C. § 330(a)(2).

**LBR 2015-2. REQUIREMENTS FOR CHAPTER 11 DEBTORS IN POSSESSION
OR CHAPTER 11 TRUSTEES**

- (a) **Reports Before Confirmation of Plan.**
- (1) The debtor, the debtor in possession, or chapter 11 trustee must provide the United States trustee with financial, management and operational reports, and such other information requested by the United States trustee in writing pursuant to the United States Trustee Notices and Guides as necessary to properly supervise the administration of a chapter 11 case.
 - (2) The United States trustee may, at any time during the pendency of a case, add or delete requirements where such modifications are necessary or appropriate.
- (b) **Duty to Comply With Requirements of the United States Trustee Notices and Guides.**
A debtor in possession or chapter 11 trustee must comply with the reasonable requirements of the United States trustee with respect to form, maintenance of records, and reporting requirements as set forth in the United States Trustee Notices and Guides. Timely compliance is mandatory.
- (c) **Interim Statements and Operating Reports.**
- (1) The debtor in possession or chapter 11 trustee must file with the court a copy of each monthly interim statement and operating report submitted to the United States trustee from the date the chapter 11 case is commenced until the date a plan is confirmed or the case is dismissed or converted to another chapter under title 11.
 - (2) Each interim statement and operating report must be filed on the date that such documents are submitted to the United States trustee, but not later than the 15th day of the month following expiration of the month which is the subject of the statement or report.
- (ed) **Duties Upon Conversion to Chapter 7.** Upon entry of an order converting a case to one under chapter 7, the debtor in possession or chapter 11 trustee, if any, must, in addition to complying with those duties set forth in FRBP 1019:
- (1) Secure, preserve and refrain from disposing of property of the estate;
 - (2) Contact the chapter 7 trustee and arrange to deliver property of the estate and all books and records to the trustee or the trustee's designated agent; and
 - (3) Within ~~5~~ 7 days after entry of said order, file and serve upon the United States trustee and the chapter 7 trustee, a verified schedule of all property of the estate as of the conversion date.

LBR 2016-1. COMPENSATION OF PROFESSIONAL PERSONS**(a) Interim Fee Applications.**

- (1) Form of Fee Application. An application for interim fees incurred or costs advanced by an attorney, accountant or other professional person, and a trustee or examiner must contain the following:
- (A) A brief narrative history and report concerning the status of the case, including the following:
- (i) Chapter 11. Applicant must describe the general operations of the debtor, stating whether the business of the debtor, if any, is being operated at a profit or loss, whether the business has sufficient operating cash flow, whether a plan has been filed, and if not, the prospects for reorganization and the anticipated date for the filing of a plan.
- (ii) Chapter 7. Applicant must report the status of administration of the estate, discussing the actions taken to liquidate property of the estate, the property remaining to be administered, the reasons the estate is not in a position to be closed, and whether it is feasible to pay an interim dividend to creditors.
- (iii) All Cases. Applicant must disclose the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration. At the hearing on an application for interim fees, the applicant should be prepared to supplement the application by declaration or by testimony to inform the court of the current financial status of the debtor's estate.
- (iv) Multiple Fee Applications. If more than 1 application for interim fees in a case is noticed for hearing at the same date and time, the narrative history provided in one of the applications may be incorporated by reference into the other interim fee applications to be heard contemporaneously by the court.
- (v) Exception. A fee application submitted by an auctioneer, real estate broker, or appraiser does not have to comply with subsection (A) of this rule, except that auctioneers, unless otherwise ordered by the court, must file the report required by FRBP 6004(f) prior to receiving final compensation.
- (B) The date of entry of the order approving the employment of the individual or firm for whom payment of fees or expenses is sought, and the date of the last fee application for the professional.
- (C) A listing of the amount of fees and expenses previously requested, those

approved by the court, and how much has been received.

- (D) A brief narrative statement of the services rendered and the time expended during the period covered by the application.
- (E) Unless employment has been approved on a fixed fee, percentage fee, or contingent fee basis, the application must contain a detailed listing of all time spent by the professional on matters for which compensation is sought, including the following:
 - (i) Date service was rendered.
 - (ii) Description of service. It is not sufficient to merely state “Research,” “Telephone Call,” “Court Appearance,” *etc.* Applicant must refer to the particular person, motion, discrete task performed, and other matters related to such service. A summary that lists a number of services under only 1 time period is not satisfactory.
 - (iii) Amount of time spent. A summary is not adequate. Time spent must be accounted for in tenths of an hour and broken down in detail by the specific task performed. Lumping of services is not satisfactory.
 - (iv) Identification of person who rendered service. If more than 1 person’s services are included in the application, applicant must identify the person who performed each item of service.
- (F) An application that seeks reimbursement of actual and necessary expenses must include a summary listing of all expenses by category (*i.e.*, long distance telephone, photocopy costs, facsimile charges, travel, messenger and computer research). As to each unusual or costly expense item, the application must state:
 - (i) The date the expense was incurred;
 - (ii) A description of the expense;
 - (iii) The amount of the expense; and
 - (iv) An explanation of the expense.
- (G) Unless employment has been approved on a fixed fee, percentage fee, or contingent fee basis, the application must contain a listing of the hourly rates charged by each person whose services form a basis for the fees requested in the application. The application must contain a summary indicating for each attorney by name:
 - (i) The hourly rate and the periods each rate was in effect;

- (ii) The total hours in the application for which compensation is sought; and
 - (iii) The total fee requested in the application.
 - (H) A description of the professional education and experience of each of the individuals rendering services, including identification of the professional school attended, year of graduation, year admitted to practice, publications or other achievements, and explanation of any specialized background or expertise in bankruptcy-related matters.
 - (I) If the hourly rate has changed during the period covered by the application, the application must specify the rate that applies to the particular hours for which compensation is sought.
 - (J) A separately filed declaration from the client indicating that the client has reviewed the fee application and has no objection to it. If the client refuses to provide such a declaration, the professional must file a declaration describing the steps that were taken to obtain the client's declaration and the client's response thereto.
 - (K) A statement that the applicant has reviewed the requirements of this rule and that the application complies with this rule.
- (2) Notice of Interim Fee Application and Hearing.
- (A) In all cases where the employment of more than one professional person has been authorized by the court, a professional person who files an application for interim fees must give other professional persons employed in the case not less than 45 days notice of the date and time of the hearing. The notice of hearing must further state:

“Other professional persons retained pursuant to court approval may also seek approval of interim fees at this hearing, provided that they file and serve their applications in a timely manner. Unless otherwise ordered by the court, hearings on interim fee applications will not be scheduled less than 120 days apart.”
 - (B) Applicant must serve not less than 21 days notice of the hearing on the debtor or debtor in possession, the trustee (if any), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002. The notice must identify the professional person requesting fees, the period covered by the interim application, the

specific amounts requested for fees and reimbursement of expenses, the date, time and place of the hearing, and the deadline for opposition papers.

- (C) In addition to the notice, a copy of the application, together with all supporting papers, must be served on the debtor or debtor in possession, the trustee (if any), any committee appointed in the case, counsel for any of the foregoing, and the United States trustee. A copy of the complete application must also be promptly furnished upon specific request to any other party in interest.

- (3) Objections. Any opposition or other responsive paper by the United States trustee or other party in interest must be served and filed at least 14 days prior to the hearing in the form required by LBR 9013-1(f).

- (b) **Motions to Approve Compensation Procedures in Chapter 11 Cases, Including Monthly Draw-down and Contingency or Success Fee Agreements.** A professional person employed in a chapter 11 case may request approval for and modifications of draw-down procedures and an order allowing payment of interim compensation more frequently than once every 120 days.

- (c) **Final Fee Application.**

- (1) Who Must File. The trustee, if any, and each professional person employed in the case must file a final fee application.

- (2) Contents. An application for allowance and payment of final fees and expenses must contain the information required of an interim fee application under LBR 2016-1(a)(1).

- (3) When Filed; Notice Required in Chapter 11 Cases.

- (A) Unless otherwise ordered by the court, a final fee application by the trustee, if any, and each professional person employed in a chapter 11 case must be filed and set for hearing as promptly as possible after confirmation of a plan.

- (B) A final fee application must cover all of the services performed in the case, not just the last period for which fees are sought, and must seek approval of all prior interim fee awards.

- (C) Applicant must serve not less than 21 days notice of the hearing on the debtor or debtor in possession, the trustee (if any), any committee appointed in the case, counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002. The notice must identify the person or entity requesting a final allowance of fees and expenses, the period covered by the final application, the specific amounts requested for fees and reimbursement of expenses, the date, time and place of the hearing, and the deadline for opposition papers.

- (D) In addition to the notice, a copy of the application, together with all supporting papers, must be served on the debtor or debtor in possession, the trustee (if any), any committee appointed in the case, counsel for any of the foregoing, and the United States trustee. A copy of the complete application must also be promptly furnished upon specific request to any other party in interest.
- (4) When Filed; Notice Required in Chapter 7 Cases.
- (A) A chapter 7 trustee must give at least 30 days written notice of intent to file a final report and account to the attorney for the debtor, the trustee's attorney and accountant, if any, and any other entity entitled to claim payment payable as an administrative expense of the estate.
- (B) A professional person seeking compensation must file and serve an application for allowance and payment of final fees and expenses on the trustee within 21 days of the date of the mailing of the trustee's notice. The failure to timely to file an application may be deemed a waiver of compensation.
- (C) All final fee applications by professional persons must be set for hearing with the chapter 7 trustee's final application for allowance and payment of fees and expenses. Notice of a final fee application must be given by the chapter 7 trustee as part of the notice of the hearing on the trustee's request for compensation. A separate notice by the applicant is not required.
- (5) Objections. Any opposition or other responsive paper by the United States trustee or other party in interest must be served and filed at least 14 days prior to the hearing in the form required by LBR 9013-1(f).
- (d) Fee Examiner. The court may, either *sua sponte* or on the motion of a party in interest, exercise its discretion to appoint a fee examiner to review fee applications and make recommendations to the court for approval.

LBR 2016-2. COMPENSATION AND TRUSTEE REIMBURSEMENT PROCEDURES IN CHAPTER 7 ASSET CASES

- (a) Authorization to Use Estate Funds Up to \$1,000 to Pay Certain Expenses. During the course of a chapter 7 case, a trustee may disburse up to \$1,000 from estate funds to pay the following actual and necessary expenses of the estate without further authorization from the court (the "Authorized Allocation"):
- (1) Actual cost of noticing, postage, copying;
 - (2) Costs to advertise sale;
 - (3) Computer charges;
 - (4) Long distance telephone;
 - (5) Postage;
 - (6) Moving or storage of estate assets;
 - (7) Teletransmission;

- (8) Travel charges for trustee (includes lodging, meals, mileage and parking);
 - (9) Bank charges for research or copies;
 - (10) Court reporting fees;
 - (11) Delivery of documents;
 - (12) Expedited mail;
 - (13) Filing and process serving;
 - (14) Notary fees;
 - (15) Recording fees;
 - (16) Deposition/transcript fees;
 - (17) Witness fees;
 - (18) Locate and move assets;
 - (19) Prepare litigation support documents;
 - (20) Insurance;
 - (21) Locksmith;
 - (22) Rent;
 - (23) Security services; and
 - (24) Utilities.
- (b) **Bond Premiums and Taxes.** In addition to payments that may be made from the Authorized Allocation, the trustee may pay during the ordinary course of the trustee's administration of an estate:
- (1) Bond premiums required by 11 U.S.C. § 322(a); and
 - (2) Obligations to taxing agencies arising under 11 U.S.C. § 507(a)(2), provided the estate is and is likely to remain administratively solvent.
- (c) **Expenses for Preparation of Tax Returns.** The trustee may, by a single application, seek authorization to employ and pay a tax preparer a flat fee (not to exceed \$750 unless the court orders otherwise) for preparation of tax returns for the estate. If the court grants such application, the trustee may pay the flat fee so ordered without further application or order. This amount is in addition to payments that may be made from the Authorized Allocation.
- (d) **Emergency Expenses.** The trustee may exceed the Authorized Allocation to pay emergency expenses, without prior court approval, to protect assets of the estate that might otherwise be lost or destroyed. Emergency expenses are limited to:
- (1) Charges for storage of the debtor's records to prevent the destruction of those records and related necessary cartage costs;
 - (2) Insurance premiums to prevent liability to the estate;
 - (3) Locksmith charges to secure the debtor's real property or business; and
 - (4) Security services to safeguard the debtor's real or personal property.

If the trustee disburses more than the Authorized Allocation to pay emergency expenses and other expenses for which the Authorized Allocation may be used, the trustee must file and serve a cash disbursement motion, as described in subsection (f) of this rule, within ~~5-court~~ 7 days after such expenses are paid.

(e) **Procedures for Employment of Paraprofessionals and Payment of Paraprofessional Fees and Expenses.** A trustee must obtain court approval to employ and to pay a paraprofessional.

(1) **Definition.** The term “paraprofessional” includes all persons or entities other than “professionals” who perform services at the trustee’s request and seek payment for services and expenses directly from the bankruptcy estate, including an agent, a field representative, an adjuster, and a tax preparer.

(2) **Employment.** A trustee may seek court approval to employ a paraprofessional by filing an employment application using court-approved form F 2016-2.1. The court’s approval of the employment of any paraprofessional is not a judicial determination as to whether services of the paraprofessional constitute “trustee services.” The following is a nonexclusive list of services that the court deems “trustee services” subject to the limitation on compensation contained in 11 U.S.C. § 326(a):

- (A) Review schedules;
- (B) Acceptance and qualification as a trustee;
- (C) Routine investigation regarding location and status of assets;
- (D) Initial contact with lessors, secured creditors, assignee for benefit creditors, *etc.*, if same can be accomplished from office;
- (E) Turnover or inspection of documents, such as bank documents;
- (F) UCC search review;
- (G) Recruit and contract appraisers, brokers, and professionals;
- (H) Mail forwarding notices;
- (I) Routine collection of accounts receivable;
- (J) Letters regarding compliance with LBR 2016-1;
- (K) Conduct 11 U.S.C. § 341(a) examinations;
- (L) Routine objections to exemption;
- (M) Routine motions to dismiss;
- (N) 11 U.S.C. § 707(b) referral to United States trustee;
- (O) Routine documentation of notices of sale, abandonment, compromise, *etc.*;
- (P) Appear at hearings on routine motions;
- (Q) Review and execute certificates of sale, deed, or other transfer documents;
- (R) Prepare and file notifications of asset case;
- (S) Prepare and file cash disbursement motions and necessary attachments;
- (T) Prepare exhibits to operating reports;
- (U) Prepare quarterly bond reports;
- (V) Prepare trustee’s interim reports;
- (W) Routine claims review and objection;
- (X) Prepare and file final reports and accounts and related orders;
- (Y) Prepare motions to abandon or destroy books and records;
- (Z) Prepare and file FRBP 3011 reports;
- (AA) Prepare and file notices and motions to abandon assets and related orders;
- (BB) Attend sales;

- (CC) Monitor litigation;
- (DD) Answer routine creditor correspondence and phone calls;
- (EE) Prepare and file applications to employ paraprofessionals;
- (FF) Review and comment on professional fee applications;
- (GG) Participate in audits;
- (HH) Answer United States trustee questions;
- (II) Close and open bank accounts;
- (JJ) Verify proposed disbursements;
- (KK) Post receipts and disbursements;
- (LL) Prepare details and calculations for payment of dividend;
- (MM) Prepare dividend checks;
- (NN) Organize and research bills;
- (OO) Prepare checks for the trustee's signature;
- (PP) Prepare internal cash summary sheets;
- (QQ) Reconcile bank accounts;
- (RR) Prepare and make deposits; and
- (SS) Additional routine work necessary for administration of the estate.

(3) Reimbursement of Fees and Expenses. A trustee may pay a paraprofessional only upon specific order of the court.

- (A) If the paraprofessional or trustee contends that the paraprofessional's services are not "trustee services," the trustee or paraprofessional must present evidence to support that contention. Absent adequate proof, the court may find that the services of the paraprofessional are "trustee services" subject to the limitation on compensation under 11 U.S.C. § 326(a).
- (B) If a trustee refuses or neglects to file a fee application for the paraprofessional, the paraprofessional may file a separate fee application pursuant to 11 U.S.C. § 330. In addition to fulfilling the requirements of 11 U.S.C. § 330, FRBP 2014 and these rules, the paraprofessional's fee application must include: (i) a declaration explaining why a separate fee application is necessary; and (ii) evidence establishing which services are "trustee services" and which are not. The paraprofessional must serve any separate fee application on the trustee, debtor, debtor's counsel (if any), the United States trustee, and all professionals and other paraprofessionals employed in the case, and must give notice of the application to all creditors.

(f) Cash Disbursements Motion.

- (1) Filing and Service. If the trustee wishes to pay expenses not authorized by this rule from estate funds, the trustee must file a cash disbursements motion to obtain court approval of payments for emergency expenses and all other expenses the trustee deems necessary for effective administration of the case. The cash disbursements motion must be in substantially the same form as court-approved form F 2016-2.2, Trustee's Cash Disbursements Motion. The trustee must serve

the cash disbursements motion on the debtor, debtor's counsel (if any), the United States trustee, holders of the 20 largest unsecured claims, and any other party in interest entitled to notice under FRBP 2002. Any objection to the cash disbursements motion must be filed and served on the trustee and trustee's counsel, if any, within ~~10~~ 14 days from the date the cash disbursements motion is served. The trustee must file the cash disbursements motion with the court within ~~15~~ 21 days after service of the motion. If a timely objection has not been filed, the trustee must include a declaration to that effect. If a timely objection is filed, the trustee must set the matter for hearing and give written notice of the date, time and place of the hearing to the objecting party, debtor, debtor's counsel (if any), and the United States trustee. The trustee may seek an expedited hearing pursuant to LBR 9075-1.

- (2) Hearing. The court may set a hearing on a cash disbursements motion regardless of whether an objection is filed. However, if the court does not advise the trustee of a hearing on the motion within 7 days after the motion is filed, the trustee may disburse funds from the estate to pay the expenses referred to in the motion to the extent the trustee deems it necessary, pending an order of the court. If, thereafter, the trustee receives notice that the court has issued an order in which the cash disbursement motion has been disapproved in whole or in part, or that the court has set a hearing, the trustee must stop paying the expenses for which authorization was sought in the motion or otherwise comply with the provisions of the order. The trustee may file a motion for reconsideration pursuant to LBR 9013-4.
 - (3) Personal Liability and Disclosure. Except as provided in this rule, a trustee who makes a disbursement without prior court approval may be personally liable to the estate for the amount of the disbursement. All disbursements made by the trustee pursuant to this rule must be disclosed in the trustee's final report and in all applications for fees or costs by the trustee and by paraprofessionals employed in the case by the trustee.
- (g) Nonexclusive Remedy. Nothing in this rule precludes the trustee from seeking court approval to disburse estate funds by way of a noticed motion filed and served pursuant to LBR 9013-1.

LBR 2070-1. CHAPTER 7 OPERATING CASES

- (a) Periods Not Exceeding 30 Days. For a period not exceeding 30 days from the date of the trustee's appointment, a trustee may operate the business of a chapter 7 debtor and pay any actual and necessary expenses from the Authorized Allocation permitted under LBR 2016-2(a) without a court order.
- (b) Periods Exceeding 30 Days. To operate the business beyond such 30-day period, the trustee must, prior to expiration of the 30-day period, file and serve a motion for authorization to operate the debtor's business under 11 U.S.C. § 721. The motion must state the approximate length of time the trustee intends to operate the business and be supported by evidence that justifies operation of the business and satisfies the requirements of 11 U.S.C. § 721.

- (c) **Authorization Not to Exceed 1 Year.** The trustee may seek approval to operate the debtor's business for a period not exceeding 1 year.
- (d) **Disbursement of Estate Funds Pending Authorization.** The court may hold a hearing on the trustee's motion after the expiration of the 30-day period, but the trustee may not disburse estate funds other than the Authorized Allocation after the 30-day period except upon specific order of the court.
- (e) **Effect of Order.** An order authorizing the trustee to operate the debtor's business does not excuse the trustee from obtaining appropriate authorization for cash disbursements under LBR 2016-2(f), except to the extent that the operating order expressly approves specific expenditures from the estate.

LBR 2072-1. NOTICE TO OTHER COURTS

- (a) **Notice of Bankruptcy Petition.** Notice of the filing of a bankruptcy petition in this district must be given by the debtor or debtor's counsel, at the earliest possible date, to:
 - (1) The clerk of any federal or state court in which the debtor is a party to pending litigation or other proceedings; and
 - (2) The federal or state judge to whom the matter is assigned, all counsel of record in the matter, and to all parties to the action not represented by counsel.
- (b) **Effect of Not Giving Notice.** The failure to give the notice required by subsection (a) of this rule may constitute cause for annulment of the stay imposed by 11 U.S.C. §§ 362, 922, 1201, or 1301, or may result in the imposition of sanctions or other relief.

LBR 2081-1. CHAPTER 11 CASES

- (a) **Motions Requiring Emergency or Expedited Relief.** Subject to FRBP 6003, the following motions may be heard pursuant to LBR 9075-1 either as an emergency motion or on shortened time:
 - (1) Motion to limit notice;
 - (2) Motion to extend time to file schedules and statement of financial affairs;
 - (3) Utility motion pursuant to 11 U.S.C. § 366;
 - (4) Motion to establish procedures for handling multiple reclamation claims;
 - (5) Request for regularly scheduled hearing dates. Upon request of a debtor, the court may establish a fixed date and time for hearing all motions and other matters in a chapter 11 case. Once ordered, the dates and time, and exceptions, if any, will be made available through the clerk's office and posted in advance on the court's website;

- (6) Motion to pay prepetition payroll and to honor prepetition employment procedures. The motion must be supported by evidence that establishes:
 - (A) The employees are still employed;
 - (B) The necessity for payment;
 - (C) The benefit of the procedures;
 - (D) The prospect of reorganization;
 - (E) Whether the employees are insiders;
 - (F) Whether the employees' claims are within the limits established by 11 U.S.C. § 507; and that
 - (G) The payment will not render the estate administratively insolvent;
- (7) Motion to honor and comply with customer obligations and deposits. The motion must be supported by evidence that relief is essential to business operations and customer confidence or that the estate may suffer postpetition damages that would prejudice creditors, the reorganization, or the value of property of the estate;
- (8) Motion to pay prepetition taxes. The motion must be supported by evidence that establishes:
 - (A) The necessity for payment;
 - (B) The prospect of reorganization;
 - (C) The means to pay;
 - (D) That the taxes to be paid are entitled to priority pursuant to 11 U.S.C. § 507; and that
 - (E) The payment will not render the estate administratively insolvent;
- (9) Motion for emergency use of cash collateral, debtor in possession financing, or cash management;
- (10) Motion for order establishing procedures for sale of estate's assets;
- (11) Appointment of a patient care ombudsman under 11 U.S.C. § 333; and
- (12) Other motions where special circumstances exist. The motion must be supported by evidence that exigent circumstances exist justifying an expedited hearing.

- (b) **Prepackaged Plans.** A hearing on a motion for order confirming a chapter 11 plan upon which voting was conducted before commencement of the case pursuant to 11 U.S.C. § 1126(b) must be scheduled, if practicable, no more than 30 days after the order for relief.
- (c) **Severance Compensation or Employee Incentive Motions.**
- (1) **Notice.** A motion for approval of a severance compensation package or employee incentive program must be heard on regular notice, absent exigent circumstances.
 - (2) **Standard.** The motion must state whether the employee is an insider. If so, the motion must state whether the insider has a bona fide job offer from another business at the same or greater rate of compensation and establish the elements of 11 U.S.C. § 503(c).

LBR 2085-1. CHAPTER 15 CASES

(a) **Chapter 15 Motions – Form and Service.**

- (1) A motion under chapter 15 must comply with FRBP 9013.
- (2) The motion must be served on the 20 largest unsecured creditors located in the United States, the administrator appointed in any foreign proceeding with respect to the debtor or a member of the same corporate group as the debtor, the 20 largest unsecured creditors in each such foreign proceeding, all United States secured creditors, all secured creditors in foreign countries who are known to the movant, persons requesting special notice under LBR 2002-1(a), and the United States trustee. Furthermore, every such motion other than one which may be considered *ex parte* must be served by the moving party on the trustee, if the motion arises in a case filed under chapter 7, 9, 11, 12, or 13.

(b) **Authorization to Act in a Foreign Country.**

- (1) Every trustee or other entity (including an examiner) appointed in a bankruptcy case pending in the United States (except for a case under chapter 15) must obtain authority under 11 U.S.C. § 1505 before acting in a foreign country.
- (2) Authorization to act in a foreign country pursuant to 11 U.S.C. § 1505 must be made on motion of the trustee or other entity seeking such authorization. The motion must be made in compliance with FRBP 9013, and must be served as provided in subsection (a) of this rule.
- (3) An order pursuant to this provision may be granted after notice and a hearing.

- (c) **Requirement to Obtain Order for Recognition.** Any foreign representative seeking to appear in any United States court or the court of any State in the United States must first obtain an order for recognition under 11 U.S.C. § 1517. No such order is required if the sole purpose of the appearance is to collect accounts receivable on behalf of the foreign debtor.

- (d) **Motion for Comity or Cooperation.** A request for comity or cooperation under 11 U.S.C. § 1509(b)(3) must be made by motion pursuant to subsection (a) of this rule.
- (e) **Advice of Foreign Representative's Intent to Commence a Case Under 11 U.S.C. § 1511.** Any foreign representative who intends to commence a case under 11 U.S.C. § 1511(a) must file a notice of intent to commence a domestic bankruptcy case with the court that has granted a petition for recognition under 11 U.S.C. § 1515. The notice must be served as provided by subsection (a) of this rule.
- (f) **Filing Proof of Claim or Equity Security Interest by Foreign Creditor or Equity Security Holder in Chapter 7 Liquidation, Chapter 9 Municipality, or Chapter 11 Reorganization Case.**
- (1) This subsection applies in all chapter 7, 9, and 11 cases to each creditor and equity security holder that does not have an address in the United States.
 - (2) Every secured creditor described in subsection (f)(1) of this rule must file a proof of claim. This obligation applies to every such creditor claiming rights in rem against property of the debtor (whether moveable or immovable), or holding a claim based on a registration in a public register or based on intellectual property (such as a patent or trademark).
 - (3) The filing of a claim or statement of interest under FRBP 3003 by a foreign creditor or security interest holder must be made as provided by that rule.
 - (4) Notice to a foreign creditor or security interest holder must be given at least 90 days before the deadline for filing a claim or notice of interest, unless otherwise ordered by the court.
 - (5) Notice of a deadline to file a claim or security interest under FRBP 3003 must be given in the official language of the country to which the notice is directed. In addition, the notice must be delivered by the same means that domestic notices and legal proceedings are delivered in that country, unless the court orders otherwise.
- (g) **Application for Recognition.**
- (1) A foreign representative's petition for recognition must be filed with the bankruptcy court in the proper venue as provided by 28 U.S.C. § 1410. In addition, it must be set for hearing pursuant to subsection (a) of this rule upon notice as required by LBR 9013-1 or, if applicable, LBR 9075-1.
 - (2) A petition for recognition must be served pursuant to subsection (a) of this rule.
 - (3) If a petition for recognition requests the recognition of a foreign proceeding as a foreign main proceeding, the petition must be accompanied by evidence of the location of the debtor's registered office, or the debtor's residence in the case of an individual. All such documents must be translated into English pursuant to 11 U.S.C. § 1515(d).

- (4) A party contending that a foreign proceeding is not a foreign main proceeding must file evidence complying with FRBP 7056 in support of the party's contention.
 - (5) A party seeking to rebut the presumption of 11 U.S.C. § 1516(c), that the debtor's registered office or habitual residence is the center of the debtor's main interests, must file evidence complying with FRBP 7056 in opposition to such a determination. Should it appear from the affidavits or declarations of such a party that the party cannot for reasons stated present evidence essential to justify the party's opposition, the court may order a continuance to permit evidence to be obtained or discovery to be had or may make such other order as is just. When a motion for recognition of a foreign main proceeding is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, supported by admissible evidence, must set forth specific facts showing that there is a genuine issue for trial.
 - (6) If the court finds that there is a genuine issue for trial on the recognition of a foreign main proceeding, the court will conduct an evidentiary hearing at the earliest practicable time, consistent with 11 U.S.C. § 1517(c).
- (h) **Relief from Automatic Stay; Prohibiting or Conditioning Use, Sale, or Lease of Property; Use of Cash Collateral.**
- (1) A motion for relief from stay, or prohibiting or conditioning the use, sale, or lease of property must be made pursuant to FRBP 4001(a). A motion for use of cash collateral must be made pursuant to FRBP 4001(b). A motion pursuant to this paragraph must be served pursuant to subsection (a) of this rule.
 - (2) A motion for relief from the automatic stay of 11 U.S.C. §§ 361 and 362, as provided by 11 U.S.C. § 1520, must be made pursuant to FRBP 4001(a).
- (i) **Adversary Proceedings under FRBP 7001.**
- (1) FRBP 7001 applies to adversary proceedings under chapter 15.
 - (2) In addition to those proceedings listed in FRBP 7001, the following proceedings in a chapter 15 case are adversary proceedings governed by FRBP 7001, *et. seq.*:
 - (A) A proceeding to recover money or property under 11 U.S.C. §§ 549 or 552;
 - (B) A proceeding to obtain an injunction or other equitable relief under 11 U.S.C. § 1519;
 - (C) A request for relief under 11 U.S.C. § 1521(a)(1), (2), (3) or (6); and
 - (D) An action initiated by a foreign representative pursuant to 11 U.S.C. § 1523.

- (j) **Protection of Creditors and Other Interested Persons.** Any request for security or bond sought in connection with relief under 11 U.S.C. § 1522(b) or (c) must be made by motion pursuant to subsection (a) of this rule.
- (k) **Intervention by a Foreign Representative.** Intervention in any proceedings in a state or federal court in the United States by a foreign representative must be pursuant to the rules applicable to that court.
- (l) **Cooperation and Direct Communication Between the Trustee and Foreign Courts.** A trustee or other person, including an examiner, acting on behalf of the debtor must obtain authorization from the court to communicate directly with a foreign judge. Such authorization may be requested by application after notice and a hearing.
- (m) **Protocols.** A party seeking approval in the form of a protocol of an agreement concerning the coordination of proceedings must seek such approval by motion pursuant to subsection (a) of this rule.
- (n) **Recognition of Domestic Case as a Main or Non-main Proceeding.**
- (1) A party in interest may request that the court designate a case under chapter 7, 9, 11, 12, or 13 as a main proceeding or a non-main proceeding. Such a request must be made by motion and comply with the requirements of subsection (a) of this rule.
 - (2) A motion for designation of a case as a main proceeding pursuant to subsection (n)(1) must be supported by evidence that the center of the debtor's main interests is located in the United States.
 - (3) A motion for designation of a case as a non-main proceeding pursuant to subsection (n)(1) must be supported by evidence that the debtor has an establishment in the United States.
- (o) **Final Report by Foreign Representative.** A foreign representative who has been recognized pursuant to 11 U.S.C. § 1517 must file a final report when the purpose of the representative's appearance in a court in the United States is completed. A representative must report completely and accurately on the nature and results of the representative's activities in the court in the United States.
- (p) **Foreign Authorities.** Any paper filed with the court that cites a foreign or international authority in a case under the Bankruptcy Code must attach a copy of the international foreign authority, with a translation into English.
- (q) **Court-to-court Communication.**
- (1) A court may communicate with a foreign court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other State.
 - (2) A court may communicate with an administrator in a foreign State or an authorized representative of the court in that State in connection with the coordination and

harmonization of the proceedings before it with the proceedings in the other State.

- (3) A court may permit a duly authorized administrator to communicate with a foreign court directly, subject to the approval of the foreign court, or through an administrator in the other jurisdiction or through an authorized representative of the foreign court on such terms as the court considers appropriate.
- (4) A court may receive communications from a foreign court or from an authorized representative of the foreign court or from a foreign administrator. The court may respond directly if the communication is from a foreign court (subject to subsection (q)(6) of this rule) in the case of two-way communications and may respond directly or through an authorized representative of the court or through a duly authorized administrator if the communication is from a foreign administrator.
- (5) Communications from a court to a foreign court may take place by or through:
 - (A) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the foreign court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate;
 - (B) Directing counsel, a foreign administrator or a trustee to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs or other documents that are filed or to be filed with the court to the foreign court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate; and
 - (C) Participating in two-way communications with the foreign court by telephone or video conference call or other electronic means, subject to subsection (q)(6) of this rule.
- (6) In the event of communications between the courts in accordance with subsections (q)(1) and (4) by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two courts:
 - (A) Counsel for all affected parties may participate in person during the communication. Advance notice of the communication must be given to all parties in accordance with the rules of procedure applicable in each court;
 - (B) The communication between the courts must be on the record; and
 - (C) The courts and judges in each court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the courts.

- (7) In the event of communications between the court and an authorized representative of the foreign court or a foreign administrator in accordance with subsections (q)(2) and (4) by means of telephone or video conference call or other electronic means, unless otherwise directed by the court:
 - (A) Counsel for all affected parties may participate in person during the communication. Advance notice of the communication must be given to all parties in accordance with the rules of procedure applicable in each court;
 - (B) The communication must be on the record; and
 - (C) Judges in each court may communicate fully with the authorized representative of the foreign court or the foreign administrator to establish appropriate arrangements for the communication without necessity for participation by counsel unless otherwise ordered by the court.

- (8) A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following provisions apply, unless otherwise ordered or unless otherwise provided in any previously approved protocol applicable to such joint hearing:
 - (A) Each court must be able to simultaneously hear the proceedings in the other court;
 - (B) Evidentiary or written materials filed or to be filed in one court must be transmitted to the other court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other court or its public availability in an electronic system must not subject the party filing the material in one court to the jurisdiction of the other court;
 - (C) Submissions or applications by the representative of any party should be made only to the court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other court to make submissions to it;
 - (D) Subject to subsection (q)(6)(B), the court may communicate with the foreign court in advance of a joint hearing, with or without counsel being present, to establish guidelines for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing; and
 - (E) Subject to subsection (q)(6)(B), the court, subsequent to the joint hearing, may communicate with the foreign court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both courts to coordinate and resolve any procedural or non-substantive matters relating to the joint hearing.

- (9) The court may, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the foreign jurisdiction without the need for further proof or exemplification thereof.
- (10) The court may, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders.
- (11) The court may coordinate proceedings before it with proceedings in another State by establishing a service list that may include parties that are entitled to receive notice of proceedings before the court in the other State (“non-resident parties”). The court may also order that all notices, applications, motions, and other materials served for purposes of the proceedings before the court be provided to or served on the non-resident parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court.
- (12) The foreign administrator or a representative of creditors in the proceedings in the other State or an authorized representative of the court in the other State may appear and be heard by the court without thereby becoming subject to the jurisdiction of the court.
- (13) The court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the court, not apply to applications or motions brought by such parties before the other court or that relief be granted to permit such parties to bring such applications or motions before the other court on such terms and conditions as it considers appropriate. Court-to-court communications in accordance with subsections (q)(5) and (6) hereof may take place if an application or motion brought before the court affects or might affect issues or proceedings in the court in the other State.
- (14) A court may communicate with a foreign court or with an authorized representative of such court in the manner prescribed by this rule for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the foreign court wherever there is commonality among the issues and/or the parties in the proceedings.
- (15) Directions issued by the court under this rule are subject to such amendments, modifications, and extensions as may be appropriate for the purposes described in this rule and to reflect the changes and developments from time to time in the

proceedings before it and before the foreign court. Any directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both courts. If either court intends to supplement, change or abrogate directions issued under this rule in the absence of joint approval by both courts, the court must give the foreign courts involved reasonable notice of its intention to do so.

- (16) Arrangements contemplated under this rule do not constitute a compromise or waiver by the court of any powers, responsibilities or authority and do not constitute a substantive determination of any matter in controversy before the court or before the foreign court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the orders made by the court or the foreign court.

LBR 2090-1. ATTORNEYS – ADMISSION TO PRACTICE

(a) Appearance Before the Court.

- (1) Attorney. An attorney admitted to practice before the district court may practice before the bankruptcy court. An attorney who is not admitted to the bar of, or permitted to practice before, the district court may not appear before the court on behalf of a person or entity, except as provided by this rule. Attorneys appearing before the court must have read the FRBP, **F.R.Civ.P.**, **F.R.Evid.**, and these rules in their entirety.
- (2) Scope of Appearance.
- (A) In a chapter 7 case, an attorney may limit the attorney’s appearance to the administration of the case, or one or more proceedings in the case.
- (B) In chapter 9, 11, 12, and 13 cases, the attorney for the debtor is presumed to appear for the case and all proceedings in the case, unless otherwise ordered by the court.
- (3) Disclosure of Scope of Appearance in Chapter 7 Cases. In a chapter 7 case, the attorney for the debtor must file a statement disclosing the scope of the attorney’s appearance on the date of the entry of the order for relief, or, if the attorney has not been employed by such date, then no later than the date of the first appearance made by the attorney. The statement required by this rule must be on a form approved by the court and signed by the debtor.

(b) Pro Hac Vice Appearance.

- (1) Permission for Pro Hac Vice Appearance. Any person who is not otherwise eligible for admission to practice before the court, but who is a member in good standing of, and eligible to practice before, the bar of any United States court, or of the highest court of any state, territory, or insular possession of the United States, who is of good moral character, and who has been retained to appear before the court, may, upon written application and at the discretion of the court, be

permitted to appear and participate *pro hac vice* in a particular case or in a particular proceeding in a case.

- (2) Disqualification from Pro Hac Vice Appearance. Unless authorized by the Constitution of the United States or Act of Congress, an applicant is not eligible for permission to appear *pro hac vice* if the applicant:
 - (A) Resides in California; or
 - (B) Is regularly employed in California; or
 - (C) Is regularly engaged in business, professional, or other similar activities in California.
- (3) Designation of Local Counsel. A person applying to appear *pro hac vice* must designate an attorney who is a member of the bar of the court and who maintains an office within this district as local counsel with whom the court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers may be served, unless otherwise ordered by the court.
- (4) Designation of Co-counsel. A judge to whom a case is assigned may, in the exercise of discretion, require the designation of an attorney who is a member of the bar of the court and who maintains an office within this district as co-counsel with authority to act as attorney of record for all purposes.
- (5) Obtaining Permission for Pro Hac Vice Appearance. An applicant seeking permission to appear *pro hac vice* must present to the clerk:
 - (A) Proof of payment of the fee required by the district court; and
 - (B) A written application on or conforming to court-approved form F 2090-1.2, Application of Non-Resident Attorney to Appear in a Specific Case, disclosing the following:
 - (i) The applicant's name, ~~residence~~, and office ~~or residence~~ address;
 - (ii) The courts to which the applicant has been admitted to practice and the respective dates of admission;
 - (iii) A statement by the applicant of the good standing to practice before the courts to which the applicant has been admitted;
 - (iv) Whether the applicant has been disciplined by any court or administrative body, and if disciplinary proceedings are pending, the details of such proceedings, and whether the applicant resigned while disciplinary proceedings were pending;

- (v) Whether in the 3 years preceding the application, the applicant has filed for permission to practice *pro hac vice* before any court within the state of California, together with the court, title and number of each such proceeding, and the disposition of each such application;
 - (vi) A certificate that the applicant has read the FRBP, the F.R.Civ.P., the F.R.Evid., and these rules in their entirety; and
 - (vii) The designation required by LBR 2090-1(b)(3) or LBR 2090-1(b)(4) including the office address, telephone number, and written consent of the designee.
- (6) Notice and Hearing. An application for permission to appear *pro hac vice* does not require notice or a hearing.
- (c) **Attorneys for the United States.** Any person who is not eligible for admission under LBR 2090-1(b), or Local Civil Rules 83-2.2.1 or 83-2.3 of the district court, who is employed within the state California and who is a member in good standing of and eligible to practice before the bar of any United States court, or of the highest court of any state, territory or insular possession of the United States, and who is of good moral character, may be granted leave of court to practice in the court in any matter for which such person is employed or retained by the United States or its agencies.
- (d) **Professional Corporations, Unincorporated Law Firms, and In-house Attorneys.**
- (1) Appearance. A professional law corporation or unincorporated law firm (collectively, “law firm”) may not make an appearance on behalf of a party nor may pleadings or other documents be signed in the name of the law firm except by an attorney admitted to the bar of or permitted to practice before the court. This rule does not apply to *pro se* appearances by the attorney individually or on behalf of the attorney’s law firm.
 - (2) Form of Appearance.
 - (A) A law firm must appear in the following form of designation or its equivalent:
 - John Smith (state bar number)
 - Smith and Jones
 - Address
 - Telephone Number
 - Fax Number (if any)
 - E-Mail Address (if any)
 - Attorneys for _____

- (B) An in-house attorney must appear in the following form of designation or its equivalent:

John Smith (state bar number)
 Name of corporation or business entity
 Address
 Telephone Number
 Fax Number (if any)
 E-Mail Address (if any)
 Attorney for _____

- (C) Except as provided in LBR 1002-1(b) and LBR 2002-1(a), the disclosure of an e-mail address by an attorney in the form of designation is optional.

(e) **Law Student Certification for Practice in Bankruptcy Court.** A law student may be certified for practice in the bankruptcy court if the student meets the requirements of Local Civil Rule 83-4 of the district court for appearances in civil cases, except that the student need only complete one-third (rather than one-half) of the legal studies required for graduation. The law student also must have:

- (1) Taken or be taking concurrently a course in bankruptcy law; and
- (2) Knowledge of and ~~be familiar~~ familiarity with the F.R.Civ.P., FRBP, F.R.Evid., the Rules of Professional Conduct of the State Bar of California, and these rules.

LBR 2090-2. ATTORNEYS – DISCIPLINE AND DISBARMENT

(a) **Standards of Conduct.** An attorney who appears for any purpose in this court is subject to the standards of professional conduct set forth in Local Civil Rule 83-3.1.2 of the district court.

~~(b) **Disciplinary Procedures.** An attorney appearing in this court submits to the discipline of the court with respect to conduct of the case or proceeding, and may be disciplined pursuant to the procedures set forth in Local Civil Rule 83-3 of the district court or General Order 96-05, Attorney Discipline Procedures in Bankruptcy Court.~~

~~(c)~~**(b) Disciplinary Authority of Court.** This rule does not limit or restrict the authority of a bankruptcy judge to impose sanctions on an attorney in a case or proceeding assigned to such judge. An attorney appearing in this court submits to the discipline of the court. If a judge has cause to believe that an attorney has engaged in unprofessional conduct, the judge may do one or more of the following:

- (1) Initiate proceedings for civil or criminal contempt;
- (2) Impose other appropriate sanctions;
- (3) Refer the matter to the appropriate disciplinary authority of the state or jurisdiction in which the attorney is licensed to practice; or

- (4) Refer the matter pursuant to the procedures set forth in Local Civil Rule 83-3 of the district court or General Order 96-05, Attorney Discipline Procedures in Bankruptcy Court.

LBR 2091-1. ATTORNEYS – WITHDRAWAL, SUBSTITUTION, AND CHANGE OF ADDRESS

- (a) **Motion for Withdrawal.** Except as provided in LBR 2091-1(b) and LBR 3015-1:
 - (1) An attorney who has appeared on behalf of an entity in any matter concerning the administration of the case, in one or more proceedings, or both, may not withdraw as counsel except by leave of court; and
 - (2) An entity represented by counsel may not appear without counsel or by a different attorney except by leave of court.

- (b) **Consensual Substitution of Counsel.**
 - (1) A consensual substitution of attorneys may be filed and served to substitute counsel without leave of court where:
 - (A) An entity on whose behalf an attorney has appeared in any matter concerning the administration of the case, in one or more proceedings, or both, desires to substitute a different attorney in place of its former attorney; or
 - (B) A previously unrepresented entity desires to substitute an attorney employed to represent the entity.
 - (2) A substitution of attorney must be filed in substantially the same form as court-approved form F 2090-1.4, Substitution of Attorney, and served on those persons entitled to notice under LBR 2091-1(c).
 - (3) An attorney’s employment as a “professional person” under 11 U.S.C. §§ 327 or 1103 is not approved merely by the filing of a Substitution of Attorney and service of notice thereof. Approval of employment must be obtained in compliance with the requirements of the Bankruptcy Code, FRBP, and these rules.

- (c) **Notice.**
 - (1) Case. An attorney seeking withdrawal or substitution who has appeared on behalf of an entity in any matter concerning the administration of the case must give notice of the proposed substitution or motion for leave to withdraw to the debtor, the United States trustee, any case trustee, any committee appointed in the case, counsel for any of the foregoing, and parties requesting special notice.
 - (2) Proceedings. An attorney seeking withdrawal or substitution who has appeared on behalf of an entity only in one or more proceedings must give notice of the proposed substitution or motion for leave to withdraw to the debtor, each party

who has been named or who has appeared in such proceeding(s), and the United States trustee.

- (3) Cases and Proceedings. An attorney seeking withdrawal or substitution who has appeared on behalf of an entity both in the case and one or more proceedings must give notice of the proposed substitution or motion for leave to withdraw to all entities entitled to notice under subsections (c)(1) and (2) of this rule.
- (d) **Corporation, Partnership, Unincorporated Association, or Trust.** An attorney moving for leave to withdraw from representation of a corporation, a partnership including a limited liability partnership, a limited liability company, or any other unincorporated association, or a trust, concurrently or prior to filing any such motion, must give notice to the client of the consequences of its inability to appear without counsel, including the possibility that a default judgment may be entered against it in pending proceedings; or, if the client is a chapter 11 debtor, that the case may be converted to chapter 7, a trustee may be appointed, or the case may be dismissed.
- (e) **Delay by Withdrawal or Substitution.**
 - (1) A withdrawal or substitution of counsel will not result in a continuance of any matter, absent an order granting a motion for continuance after notice and a hearing pursuant to LBR 9013-1(m).
 - (2) Unless good cause is shown and the ends of justice require, no substitution or withdrawal will be allowed that will cause unreasonable delay in prosecution of the case or proceeding to completion.
- (f) **Change of Address.**
 - (1) An attorney who changes office address must file and serve a notice of change of address to update the attorney's address in the court's electronic database.
 - (2) In the absence of a specific request to the contrary, a change of address will update the attorney's address in the court's electronic database and the mailing list in all open cases in which the attorney represents a debtor or other party in interest.

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LBR 3001-1. NOTICE OF CLAIMS BAR DATE IN CHAPTER 11 CASES

When the court orders a bar date for the filing of claims in a chapter 11 case, the debtor in possession or the chapter 11 trustee must serve notice of the claims bar date on all creditors and other parties entitled to notice. The following language must be used in the notice:

NOTICE OF CLAIMS DEADLINE

The Bankruptcy Court has set a deadline of _____, 20____ for creditors and holders of ownership interests in the above-referenced debtor to file proofs of claim against or proofs of interest in the debtor's estate.

The exceptions to this deadline for filing proofs of claim or interest are: (1) claims arising from rejection of executory contracts or unexpired leases; (2) claims of governmental units; and (3) claims arising as the result of transfer avoidance pursuant to chapter 5 of the Bankruptcy Code.

For claims arising from rejection of executory contracts or unexpired leases pursuant to 11 U.S.C. § 365, the last day to file a proof of claim is: (a) 30 days after the date of entry of the order authorizing the rejection, or (b) **[repeat the bar date set for all other claims here]**, whichever is later.

For claims of "governmental units," as that term is defined in 11 U.S.C. § 101(27), proofs of claim are timely filed if filed: (a) before 180 days after the date of the order for relief in this case, or (b) by **[repeat the bar date set for all other claims here]**, whichever is later. 11 U.S.C. § 502(b)(9).

For claims arising from the avoidance of a transfer under chapter 5 of the Bankruptcy Code, the last day to file a proof of claim is: (a) 30 days after the entry of judgment avoiding the transfer, or (b) **[repeat the bar date set for all other claims here]**, whichever is later.

If you are listed on the Schedules of Assets and Liabilities of [debtor] and your claim or interest is not scheduled as disputed, contingent, unliquidated or unknown, your claim or interest is deemed filed in the amount set forth in the schedules, and the filing of a proof of claim or interest is unnecessary if you agree that the amount scheduled is correct and that the category in which your claim or interest is scheduled (secured, unsecured, preferred stock, common stock, *etc.*) is correct. 11 U.S.C. § 1111(a).

If your claim or interest is not listed on the schedules or is scheduled as disputed, contingent, unliquidated or unknown, or you disagree with the amount or description scheduled for your claim or interest, you must file a proof of claim or interest.

Failure of a creditor or interest holder to file timely a proof of claim or interest on or before the deadline may result in disallowance of the claim or interest or subordination under the terms of a plan of reorganization without further notice or hearing. 11 U.S.C. § 502(b)(9). Creditors and interest holders may wish to consult an attorney to protect their rights.

LBR 3007-1. OBJECTIONS TO CLAIMS**(a) Objections.**

- (1) An objection to claim is a “contested matter” under FRBP 9014. Except to the extent otherwise provided in this rule, an objection to claim must comply with LBR 9013-1 and be titled “Motion for Order Disallowing Claim” unless the objection is to become an adversary proceeding pursuant to FRBP 3007(b).
- (2) A claim objection must include the number, if any, assigned to the disputed claim on the court’s claims register.
- (3) A separate objection must be filed to each proof of claim unless:
 - (A) The objection pertains to multiple claims filed by the same creditor;
 - (B) The objection is an omnibus claim objection; or
 - (C) The court orders otherwise.
- (4) An omnibus claim objection asserts the same type of objection to claims filed by different creditors (*e.g.*, claims improperly filed as priority claims, duplicate claims, claims filed after the bar date, *etc.*, as described in FRBP 3007(d)). In addition to the requirements set forth in FRBP 3007(e), an omnibus claim objection must:
 - (A) Identify the name of each claimant and the claim number in the caption of the objection; and
 - (B) Include as exhibits the documents supporting each claim objection organized and indexed by claim number.
- (5) If more than 20 objections in a case are noticed for hearing on a single calendar, the objector must comply with the supplemental procedures contained in the Court Manual available from the clerk and on the court’s website.

(b) Notice and Hearing.

- (1) A claim objection must be set for hearing on notice of not less than 30 days.
- (2) The claim objection must be served on the claimant at the address disclosed by the claimant in its proof of claim and at such other addresses and upon such parties as may be required by FRBP 7004 and other applicable rules.
- (3) Notice of the objection on or conforming to court-mandated form F 3007-1.3, Notice of Objection to Claim must be served with the claim objection. The notice must advise the claimant of the date, time, and place of hearing, and state:
 - (A) A response must be filed and served not later than 14 days prior to the date of hearing set forth in the notice; and

- (B) If a response is not timely filed and served, the court may grant the relief requested in the objection without further notice or hearing.
 - (4) The court will conduct a hearing on a claim objection to which there is a timely response.
 - (5) If the claimant timely files and serves a response, the court, in its discretion, may treat the initial hearing as a status conference if it determines that the claim objection involves disputed fact issues or will require substantial time for presentation of evidence or argument.
 - (6) If the claimant does not timely file and serve a response, the court may sustain the objection and grant the motion for order disallowing the claim without a hearing.
 - (A) The objector must file a declaration attesting that no response was served upon the objector. The declaration must identify the docket number and filing date of the objection to claim, notice, and proof of service of the notice and objection to claim, and be served on the claimant.
 - (B) The objector must also lodge a proposed order prepared and served in accordance with LBR 9021-1 which provides for service of the entered order on the claimant and counsel, if any, and the United States trustee.
- (c) **Evidence Required.**
- (1) An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified.
 - (2) A copy of the complete proof of claim, including attachments or exhibits, must be attached to the objection to claim, together with the objector's declaration stating that the copy of the claim attached is a true and complete copy of the proof of claim on file with the court, or, if applicable, of the informal claim to which objection is made.
 - (3) If the complete proof of claim is not readily available from the court file, the objector may formally request a copy from the holder of the claim by serving the creditor with a notice in substantially the same form as court-approved form F 3007-1.2, Notice of Request for a Copy of Proof of Claim.
 - (A) The request must advise the holder of the claim that failure to supply a complete copy of the proof of claim, including all attached documentation, within 30 days of the notice may constitute grounds for objection to the claim based on the claimant's failure to provide requested documentation to support the claim.

- (B) If an objection is filed on this basis, it must be accompanied by a declaration providing evidence that the proof of claim was not readily available from the court file or otherwise.
- (4) If the basis for the objection is that the proof of claim was filed after the bar date, the objection must include a copy of each of the following:
 - (A) The bar date order, if any;
 - (B) The notice of bar date; and
 - (C) Proof of service of the notice of bar date.
- (5) If the basis for the objection is that there are duplicate proofs of claim, the objection must include a complete copy of each proof of claim.

LBR 3011-1. PROCEDURE FOR OBTAINING ORDERS RELEASING UNCLAIMED FUNDS

(a) Form of Motion.

- (1) An entity seeking the release of unclaimed funds pursuant to 28 U.S.C. § 2042 must file a motion in compliance with LBR 9013-1 using either court-approved form F 3011-1, Motion for Order Releasing Unclaimed Funds, or a motion containing all of the information and supporting evidence required by the court-approved form.
- (2) The failure to comply with this requirement may result in denial of the motion without a hearing under LBR 9013-1.

(b) Notice.

- (1) A motion for an order releasing unclaimed funds must be served on at least the following parties:
 - (A) United States attorney for the Central District of California;
 - (B) United States trustee for the Central District of California;
 - (C) The trustee appointed in the case and the trustee's counsel (if any);
 - (D) The debtor, debtor in possession, reorganized debtor, or other fiduciary appointed to supervise the distribution of funds and assets of the estate and its counsel (if any); and
 - (E) If movant is not the original creditor or an employee thereof, the original creditor, addressed to the attention of the managing officer or person of that creditor, if applicable, and upon the creditor's counsel (if any).

- (2) The motion will be denied if not served properly on all parties listed in subsection (b)(1) of this rule.

LBR 3015-1. PROCEDURES REGARDING CHAPTER 13 CASES

(a) Applicability.

- (1) Except as provided herein, this rule relates to chapter 13 cases in all divisions of the bankruptcy court and supersedes any previous orders in conflict with the provisions hereof.
- (2) To the extent that this rule conflicts with any other provisions of the Local Bankruptcy Rules, the provisions of this rule prevail. In all other respects, the Local Bankruptcy Rules apply in all chapter 13 cases.

(b) Filing and Service of Petitions, Plans, Proofs of Claim, and Other Forms.

- (1) Filing of Petition. An original and one copy of the petition, schedules and all other documents required to initiate the case must be filed with the court. If the petition is filed electronically, the debtor must provide court copies as required by the CM/ECF Procedures contained in the Court Manual available from the clerk and on the court's website.

Except as provided by FRBP 1019(1)(A), if the chapter 13 schedules, plan, and all other required documents are not filed with the petition, the clerk will issue a notice advising the debtor that, if the missing documents are not filed within ~~15~~ 14 days from the date of the filing of the petition, the court may dismiss the case, unless the court grants a motion to extend time filed within the ~~15~~ 14 days.

- (2) Time Extension. A motion for extension of time must be accompanied by a declaration showing specific cause for an extension of time, the amount of additional time requested, the date the petition was filed, and a proof of service evidencing that the motion and declaration were served on the chapter 13 trustee. The court may consider the motion without a hearing. If any schedule, the statement, or the plan is not filed within the initial ~~15~~ 14 days or within such additional time as the court may allow in response to a timely motion for extension of time, the court may dismiss the case.
- (3) Notice and Service. The debtor must serve a notice of the hearing on confirmation of debtor's chapter 13 plan, along with a copy of the chapter 13 plan, on all creditors and the chapter 13 trustee at least 28 days before the date first set for the § 341(a) meeting of creditors, using the court-mandated F 3015-1 form. A proof of service must be filed with the court and served on the chapter 13 trustee at least ~~10~~ 14 days prior to the date first set for the meeting of creditors. Chapter 13 papers should not be served on the United States trustee, except as provided in subsection (q) of this rule or when the United States trustee serves as chapter 13 trustee.

- (4) Forms. The chapter 13 petition, schedules, statement of financial affairs, and proofs of claim must be prepared on the appropriate Official Form, as required by FRBP 1007(b)(1). All other chapter 13 papers filed by the debtor must be filed using applicable court-mandated forms, if any, or be prepared in the same format. Any modification to the text of an Official Form or court-mandated form must comply with LBR 9009-1.

If a court-mandated form is not used, the debtor must include a statement under penalty of perjury that either certifies that the document contains all of the language of the court-mandated form or specifies each respect in which the document differs from the court-mandated form.

- (5) Proof of Claim. Each proof of claim must be filed in accordance with FRBP 3002 and must be served on the debtor's attorney or the debtor, if not represented by counsel, and on the chapter 13 trustee. Each proof of claim must include a proof of service.
- (6) Domestic Support Obligations. In all cases in which there is a domestic support obligation, regardless of the entity holding such claim, the debtor must provide to the chapter 13 trustee within ~~15~~ 14 days of the filing of the petition the name, current address, and current telephone number of the holder of the claim along with any applicable case number and account number. Throughout the duration of the case, the debtor must inform the chapter 13 trustee of any new or changed information regarding this requirement. Should a domestic support obligation arise after the filing of the petition, the debtor must provide the required information to the chapter 13 trustee as soon as practicable but no later than ~~15~~ 14 days after the duty arises to pay the domestic support obligation.

(c) **Meeting of Creditors – § 341(a)**.

- (1) Notice and Service. Notice of the § 341(a) meeting of creditors and initial confirmation hearing date along with a proof of claim form will be served on all creditors by the court at least 28 days before the date first set for the § 341(a) meeting of creditors.
- (2) Attendance Requirement. The debtor and debtor's attorney (if any) must attend the § 341(a) meeting of creditors. If the case is a joint case, both debtors must appear.
- (3) Evidence of Income. The debtor must provide evidence of current income (pay stubs, tax returns, or other equivalent documentation) to the chapter 13 trustee at least ~~8~~ 7 days before the § 341(a) meeting of creditors. If income from third party contributors will be used to fund the plan, the debtor must also provide evidence (declarations and pay stubs or other appropriate evidence) of the commitment and ability of the third party to make payments.
- (4) Required Reports in a Business Case. If the debtor is operating a business or is otherwise self-employed, the debtor must submit to the chapter 13 trustee, at least

~~8~~ 7 days before the § 341(a) meeting of creditors, the following reports required to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the feasibility of such business:

- (A) Projection of average monthly income and expenses for the next 12 months;
 - (B) Evidence of appropriate business insurance;
 - (C) Inventory of goods as well as a list of business furnishings and equipment as of the date of the filing of the petition;
 - (D) Monthly income and expense statements for at least the 6 months preceding the date of the filing of the petition, or for such shorter time if the business has been in operation for less than the requisite 6 months, signed by the debtor under penalty of perjury, including a statement regarding incurred and unpaid expenses;
 - (E) Tax returns for at least 5 years or since the start of the business, whichever period is shorter; and
 - (F) Such other evidence requested by the chapter 13 trustee, including bank statements, canceled checks, contracts, or other information relevant to the debtor's ability to fund the proposed plan.
- (5) Other Required Documents. The debtor must submit to the chapter 13 trustee, at least ~~8~~ 7 days before the § 341(a) meeting of creditors, the Declaration re Payment of Domestic Support Obligation (Preconfirmation), the Declaration re Tax Returns (Preconfirmation), and any other required documents.
- (6) Failure to Comply. If the debtor fails to comply with any of the requirements of subsection (c) of this rule, such failure may result in:
- (A) Disgorgement of attorneys' fees if the failure is attributed to the debtor's attorney;
 - (B) Continuance of the § 341(a) meeting or confirmation hearing; and/or
 - (C) Dismissal of the case either (i) without prejudice or (ii) with a 180-day bar to refiling pursuant to 11 U.S.C. § 109(g), if the court finds willful failure of the debtor to abide by orders of the court or to appear before the court in proper prosecution of the case.
- (d) **Confirmation Hearing**. The debtor's attorney or the debtor, if not represented by counsel, must appear at the confirmation hearing unless specifically excused by court order or by the trustee prior to the confirmation hearing in conformance with procedures of the judge to whom the case is assigned.

- (1) Varied Calendaring and Appearance Procedures. The judges of this district do not have a uniform policy governing calendaring and appearance at a confirmation hearing. Some judges allow confirmation to take place as early as the date of the § 341(a) meeting of creditors and without court appearance by any party if there are no timely objections to confirmation or all such objections have been resolved. Some judges require a hearing on all plan confirmations but excuse appearances by the debtor and debtor's attorney (if any) if there are no timely objections to confirmation or all such objections have been resolved. Some judges require a hearing on all plan confirmations and appearance by the debtor and debtor's attorney (if any), regardless of whether there are unresolved objections to confirmation.

Because of this variance in procedure, parties in interest are advised to contact the chapter 13 trustee assigned to the case, consult the chapter 13 trustee's website, or refer to the court's website as it may pertain to the requirements of an individual judge.

- (2) Preparation of Order Confirming Plan. Unless otherwise ordered by the court, the chapter 13 trustee will prepare and lodge a proposed Order Confirming Plan ("Order"). The Order will state the amount of the debtor's attorney's fees and costs allowed by the court. If a Rights and Responsibilities Agreement has been signed by the attorney and debtor, filed, and served on the chapter 13 trustee, the order will provide for the amount set forth in that agreement, unless the court orders otherwise.

(e) **Personal Property, including Vehicles.**

- (1) Postpetition Payments. The plan may provide that postpetition contractual payments on leases of personal property and claims secured by personal property, including vehicles, will be made directly to the creditor. All such direct payments must be made as they come due postpetition. If there are arrearages or the plan changes the amount of payment, duration, or interest rate for any reason, including the fact that a portion of the claim is deemed unsecured, then all payments so provided in the plan must be paid through the chapter 13 trustee. If the plan provides for postpetition contractual payments to be made through the chapter 13 trustee, the debtor must pay the lease and adequate protection payments required by 11 U.S.C. §§ 1326(a)(1)(B) and 1326(a)(1)(C) through the chapter 13 trustee.
- (2) Property Surrendered in Confirmed Plan. When the confirmed plan provides for the surrender or abandonment of property, the trustee is relieved from making any payments on the creditor's related secured claim, without prejudice to the creditor's right to file an amended unsecured claim for a deficiency, when appropriate.

- (f) **Domestic Support Obligations.** The plan may provide for current payments of domestic support obligations directly to the creditor. Arrearages must be paid through the chapter 13 trustee unless specific cause is shown, supported by appropriate declaration or other admissible evidence.

(g) **Objections to Plan.**

- (1) **Filing and Service.** Objections, if any, to the confirmation of the plan must be in writing, supported by appropriate declarations or other admissible evidence, filed with the court, and served on debtor's attorney, the debtor (if not represented by counsel), and the chapter 13 trustee not less than ~~8~~ 7 days before the § 341(a) meeting of creditors.
- (2) **Form of Objection and Caption.**
 - (A) **Written.** A written objection must state in the caption the date, time, and place of the § 341(a) meeting of creditors and the date, time, and place of the confirmation hearing.
 - (B) **Oral.** Notwithstanding subsection (g)(1), an oral objection may be made on the record at the § 341(a) meeting of creditors by any party in interest.
- (3) **Failure to Object or to Prosecute Objection.** The failure either to file either a written objection on a timely basis or to appear at the § 341(a) meeting of creditors to prosecute the objection may be deemed a waiver of the objection.
- (4) **Attendance.** Any creditor who objects to confirmation of the plan should attend both the § 341(a) meeting of creditors and the confirmation hearing if the objection is not resolved. If the objecting creditor does not appear at the confirmation hearing, the court may overrule the objection.

(h) **Amendments to Plan Prior to Confirmation.**

- (1) **Filing and Service.** If a debtor wishes the court to confirm a plan other than the plan originally filed with the court, an amended plan must be received by the chapter 13 trustee and filed with the court at least ~~8~~7 days before the confirmation hearing. If the amended plan will adversely affect any creditor (for example, if it treats any creditor's claim less favorably than the previously filed plan), the amended plan must also be served on all affected creditors at least ~~25~~ 28 days before the confirmation hearing. Failure to comply with these requirements may result in continuance of the confirmation hearing or dismissal of the case.
- (2) **Form of Amendment and Caption.** The caption of an amended plan must identify the pleading as an amended plan (*e.g.*, "First Amended Plan," "Second Amended Plan,") and must state the date, time, and place of the confirmation hearing at which the debtor will seek confirmation.
- (3) **Amended Plan Payments.** If the debtor has filed an amended plan prior to confirmation, the plan payments that come due after the date the amended plan is filed must be made in the amount stated in the amended plan, which may be higher or lower than the amount stated in the original plan. Where successive amended plans are filed, any plan payment that comes due must be made in the amount stated in the most recently filed amended plan.

- (i) **Amendments to Plan at the Confirmation Hearing.** An amendment to a plan which does not adversely affect creditors may be made at the confirmation hearing by interlineation in the confirmation order. The proponent should give the chapter 13 trustee an opportunity to review the proposed amendment prior to the confirmation hearing.
- (j) **Objections to Claims.**
- (1) **Filing and Service.** An objection to claim must: (A) be filed with the court and served, subject to subsection (x) of this rule, on the chapter 13 trustee and affected creditor; (B) identify the claim by both the claim number on the court's docket and the claim number on the chapter 13 trustee's docket; (C) give notice of the date, time, and courtroom of hearing on the face of the objection; and (D) comply with LBR 3007-1.
- (2) **Payments on Claim.** Pending resolution, the chapter 13 trustee will make payments on only the uncontroverted portion of the claim subject to an objection, until such time as the court orders otherwise.
- (k) **Plan Payments to Chapter 13 Trustee.**
- (1) **Plan Payment Procedure.**
- (A) Plan payments are due on the same day of each month beginning not later than 30 days after the petition is filed. If the case was converted from chapter 7, the first plan payment is due 30 days from the date of conversion. However, if the plan payment due date falls on the 29th, 30th, or 31st of the month, then the plan payment is due on the 1st of the following month. Unless otherwise instructed by the assigned chapter 13 trustee, all plan payments that accrue before the § 341(a) meeting of creditors must be tendered, in the form described in subsection (k)(3) of this rule, to the chapter 13 trustee or the trustee's representative at the § 341(a) meeting of creditors.
- (B) All plan payments that accrue after the § 341(a) meeting of creditors but prior to confirmation must be tendered on a timely basis to the chapter 13 trustee, as instructed by the chapter 13 trustee at the § 341(a) meeting of creditors.
- (C) All plan payments that accrue after confirmation of the plan must be sent to the address provided by the chapter 13 trustee.
- (D) To the extent debtor has made plan payments under an original or modified plan prior to confirmation that differ from payments required by the confirmed plan, the confirmation order must account for plan payments made through the date of confirmation and adjust the on-going plan payments accordingly so that the debtor will complete payment of all plan amounts within the term of the confirmed plan.

- (2) Adequate Protection Payments. The debtor cannot reduce the amount of the plan payments to the chapter 13 trustee under 11 U.S.C. §§ 1326(a)(1)(B) or 1326(a)(1)(C) without an order of the court.
- (A) Pending confirmation of the plan, the chapter 13 trustee will promptly transmit payments received from the debtor as proposed in the debtor’s chapter 13 plan to a creditor holding an allowed claim secured by personal property where such security interest is attributable to the purchase of such property.
- (B) The chapter 13 trustee may assess an administrative fee for effecting the payments required in subsection (k)(2)(A) of this rule and may collect such fee at the time of making the payment. The allowed expense fee must be no more than the percentage fee established by the Attorney General pursuant to 28 U.S.C. § 586(e)(1)(B) in effect at the time of the disbursement.
- (C) Should the case be dismissed or converted prior to or at the hearing on confirmation of the plan, any portion of the balance on hand which has been tendered to the chapter 13 trustee for adequate protection must be disbursed to the creditor to whom those adequate protection payments are owed as soon as practicable.
- (3) Form of Payment. Unless and until a payroll deduction order is effective, all plan payments must be in the form of cashier’s check, certified funds, or money order made payable to the “Chapter 13 Trustee” and tendered by the debtor as instructed by the chapter 13 trustee. The court may require plan payments through a payroll deduction order. If a payroll deduction order is not issued upon confirmation of a plan or authorized in the confirmation order, whenever a plan payment is more than ~~20~~ 21 days late, the chapter 13 trustee may bring a noticed motion requesting the court to issue such an order. The issued order must be served upon the debtor’s employer, the debtor, and the debtor’s attorney (if any).
- (4) Dismissal or Conversion for Non-Payment. If the debtor fails to make a plan payment, the case may be dismissed or converted to a case under chapter 7. If the case is dismissed for willful failure of the debtor to abide by an order of the court, or to appear before the court in proper prosecution of the case, the court may impose a 180-day bar to refile in accordance with 11 U.S.C. § 109(g).
- (l) **Chapter 13 Trustee’s Fees.** The minimum trustee’s fee for a chapter 13 in which a plan is not confirmed is \$100. The minimum trustee’s fee in a case where the plan is confirmed is \$200.
- (m) **Payments on Mortgages or Trust Deeds.**
- (1) Scope of Rule. The term “Real Property” as used in this subsection includes both (A) commercial and residential real property and undeveloped land owned by the debtor; and (B) mobile and manufactured homes owned by the debtor and installed

on a permanent foundation or used as a dwelling, but does not include any property that the debtor's filed plan specifically states will be surrendered.

- (2) Postpetition Payment Procedure. Except for plans in which the debtor elects to make postpetition mortgage payments through the plan, until a plan is confirmed, a debtor must pay in a timely manner directly to each secured creditor all payments that fall due postpetition on debt secured by Real Property, as defined above, and must provide evidence of such payments on court-mandated form F 3015-1.4 in the manner set forth below.
- (3) Payment Through Plan. If the debtor elects to pay postpetition mortgage payments through the plan, then the amount of this payment must be included in each monthly plan payment tendered both pre- and postconfirmation to the chapter 13 trustee.
- (4) Determination of Due Date. With the exception of the payment due for the month in which the petition is filed (the "Filing Month Payment"), the due date of a payment for the purpose of this subsection is the last day that the payment may be made without a late charge or penalty. The due date of the Filing Month Payment will be the date on which such payment first becomes due under the terms of the applicable promissory note. If that date falls on or before the petition date, the Filing Month Payment will be considered prepetition and need not be paid in order to comply with this subsection.
- (5) Form of Payment. The payments required by subsection (m)(2) of this rule must be in the form of money order, cashier's check, wire transfer (including direct payments over the internet or by automatic withdrawals from the debtor's checking account), or other certified funds and must indicate on each item the debtor's name, the bankruptcy case number, and the appropriate loan number or credit account number.
- (6) Evidence of Payment. On or before each of the following dates, the debtor must file with the court and serve on the chapter 13 trustee and all secured creditors to whom the debtor is required to make payments under this subsection a declaration executed under penalty of perjury, on court-mandated form F 3015-1.4, evidencing that the debtor has made all of the payments required by subsection (m)(2) or (3) of this rule: (A) the date scheduled for each § 341(a) meeting of creditors; and (B) the date of each hearing to consider confirmation of a chapter 13 plan in the case. Copies of all money orders, cashier's checks or other instruments used to make the payments must be attached to the form.
- (7) Submission of Declarations. The debtor must bring a copy of an executed form F 3015-1.4, together with a proof of service reflecting service in accordance with this subsection, to the initial § 341(a) meeting of creditors. The form must reflect all payments made between the date of the petition and the date of the initial § 341(a) meeting of creditors. Thereafter, the debtor must bring an updated form to each continued § 341(a) meeting of creditors and each confirmation hearing, together with proof of service reflecting service of the form in accordance with this

subsection. Each updated form must reflect, cumulatively, all payments made between the date of the petition and the date of the form. If the debtor owns more than one Real Property, the debtor must prepare and submit a separate form F 3015-1.4 for each Real Property.

- (8) Failure to Make Postpetition Payments. Failure to make all of the payments required by subsection (m)(2) or (3) of this rule in a timely manner will generally result in dismissal of the case. In determining whether a debtor has complied with this subsection at a confirmation hearing, the court will disregard payments as to which a late penalty has not yet accrued or which are due on the date of the confirmation hearing. The failure to submit form F 3015-1.4 at each § 341(a) meeting of creditors and each confirmation hearing, with all required attachments, may result in dismissal of the case, and the court may impose a 180-day bar against refiling pursuant to 11 U.S.C. § 109(g).
- (n) **Modification of Confirmed Plan or Suspension of Plan Payments.** After a chapter 13 plan has been confirmed, its terms can be modified only by court order. A motion to modify a confirmed plan or to suspend plan payments must be made in accordance with subsections (w) and (x) of this rule and must be filed using court-mandated forms.
- (o) **Tax Returns.** For each year a case is pending after the confirmation of a plan, the debtor must provide to the chapter 13 trustee within ~~10~~ 14 days after the return is filed with the appropriate tax agencies a copy of: (1) the debtor's federal and state tax returns; (2) any request for extension of the deadline for filing a return; and (3) the debtor's forms W-2 and 1099.
- (p) **Sale or Refinance of Real Property.** A sale or refinancing of the debtor's principal residence or other real property must be approved by the court. A motion to approve a sale or refinance of real property may be made by noticed motion in accordance with subsections (w) and (x) of this rule.
- (q) **Motion for Dismissal or Conversion.**
- ~~(1) Case Dismissal. If the case has not been converted from another chapter, the debtor may seek dismissal of the case by filing a request to dismiss. If the case has been converted from another chapter, dismissal must be sought by motion. For all such requests or motions, notice must be given to all creditors and the chapter 13 trustee. In addition, the request or motion must disclose by a statement under penalty of perjury, whether the present case has been converted from another chapter of the Bankruptcy Code, and whether any motion for relief from, annulment of, or conditioning of the automatic stay has been filed against the debtor in the present case. The motion must comply with LBR 1017-2(f).~~
- (1) **Voluntary Dismissal.**
- (A) **Debtor's Request for Dismissal.** If the case has not been converted from another chapter, a debtor may seek dismissal of the case by filing with the clerk of the bankruptcy court a request for voluntary dismissal pursuant to

- 11 U.S.C. § 1307(b) and a proof of service evidencing that the request for dismissal was served upon the chapter 13 trustee and the United States trustee.
- (B) Motion for Voluntary Dismissal. If the case has been converted from another chapter, a debtor must seek dismissal by motion filed and served in accordance with LBR 9013-1(o). The motion must comply with LBR 1017-2(f). Notice must be given to the chapter 13 trustee, any former trustee, all creditors, and any other party in interest entitled to notice under FRBP 2002.
- (C) Mandatory Disclosure. Whether dismissal is sought by request or motion, debtor must disclose under penalty of perjury whether the present case has been converted from another chapter of the Bankruptcy Code, and whether any motion for relief from, annulment of, or conditioning of the automatic stay has been filed against the debtor in the present case.
- (2) Debtor Conversion of Chapter 13 to Chapter 7. Pursuant to FRBP 1017 and LBR 1017-1(a)(1), the conversion of a chapter 13 case to a case under chapter 7 will be effective upon:
- (A) The filing by the debtor with the clerk of the bankruptcy court of a notice of conversion pursuant to 11 U.S.C. § 1307(a) and a proof of service evidencing that the notice of conversion was served upon the chapter 13 trustee and the United States trustee; and
- (B) Payment of any fee required by 28 U.S.C. § 1930(b); provided however,
- (C) Any distributions of estate funds made by the chapter 13 trustee in the ordinary course of business for the benefit of the debtor's estate prior to receipt of notice of dismissal or conversion will not be surcharged to the chapter 13 trustee.
- (3) Debtor Conversion of Chapter 13 to Chapter 11. A motion by the debtor to convert a chapter 13 case to a case under chapter 11 must be noticed for hearing.
- (4) Interested Party Dismissal or Conversion of Chapter 13 to Chapter 7, 11, or 12. A motion by any other party in interest to either dismiss a chapter 13 case, or alternatively, to convert a chapter 13 case to a case under chapter 7, 11, or 12, must be noticed for hearing by the moving party. This notice must be given to the debtor, debtor's attorney (if any), all creditors, the chapter 13 trustee, any former trustee, and the United States trustee.
- (5) Lodging and Service of Order. When an order is required, the moving party must prepare and lodge the proposed order of dismissal or conversion in accordance with LBR 9021-1. Notwithstanding LBR 9021-1(b)(1)(D) and (E), no copies or envelopes are required to be lodged along with the proposed order, as the clerk will prepare a separate notice of dismissal or conversion.

(r) **Motions Regarding Stay of 11 U.S.C. § 362.**

- (1) Required Format and Information. A motion regarding the stay of 11 U.S.C. § 362 must comply with LBR 4001-1.
- (2) Default Motions.
 - (A) Preconfirmation Default. A motion for relief from the automatic stay based solely upon a preconfirmation payment default is premature until a late charge has accrued under the contract on the postpetition obligation that the creditor seeks to enforce. If no late charge is provided, the motion may be brought ~~10~~ 14 days after the postpetition payment is due. A motion for relief from stay based on other grounds may be brought at any time.
 - (B) Postconfirmation Default. A motion for relief from the automatic stay based solely on postconfirmation payment default is premature until a late charge has accrued under the contract on the obligation that the creditor seeks to enforce. If no late charge is provided, the motion may be brought ~~10~~ 14 days after payment is due.
- (3) Stipulations Regarding the Stay of 11 U.S.C. § 362. A stipulation for relief from the automatic stay or to modify the automatic stay, or to impose or continue the stay, does not require the consent or signature of the chapter 13 trustee but must be prepared and lodged in accordance with LBR 4001-1(b)(2)(B).
- (4) Payments after Relief from Automatic Stay. If an order for relief from the automatic stay is granted, unless otherwise specified in the order, the chapter 13 trustee is relieved from making any further payments to the secured creditor that obtained such relief. The secured portion of that creditor's claim is deemed withdrawn upon entry of the order for relief, without prejudice to filing an amended unsecured claim for a deficiency when appropriate. The secured creditor that obtains relief from the automatic stay must return to the chapter 13 trustee any payments the creditor receives from the chapter 13 trustee after entry of the order unless the stipulation or order provides otherwise.
- (5) Shortened Notice Hearing. A hearing on a motion for relief from the automatic stay on shortened notice may be sought pursuant to LBR 9075-1(b).
- (6) No Surcharge of Chapter 13 Trustee. The chapter 13 trustee will not be surcharged for any distribution of funds in the ordinary course of business prior to receiving written notice that the automatic stay is not in effect or a claim should not be paid.

(s) **Postconfirmation Adequate Protection Orders.**

- (1) Filing and Service. After confirmation of a plan, if the debtor and a secured creditor propose to modify the payments by the chapter 13 trustee to the secured creditor by way of an adequate protection/relief from the automatic stay agreement,

the debtor or creditor must file and serve a motion for an order approving the modification of the plan by said agreement pursuant to subsections (w) and (x) of this rule.

- (2) Payments Pending Plan Modification. Notwithstanding court approval of an adequate protection/relief from the automatic stay agreement, the trustee will continue to make payments and otherwise perform the trustee's duties in accordance with the plan as confirmed unless: (A) the debtor receives a separate court order approving a modification to the plan; or (B) the adequate protection/relief from the automatic stay agreement specifically modifies the treatment of the claim under the confirmed plan.

(t) **Discharge Procedures.**

- (1) General. When the chapter 13 trustee has completed payments under the plan and all other plan provisions have been consummated, the clerk will give to the debtor and the debtor's attorney (if any), a Notice of Requirement to File a Debtor's Certification of Compliance Under 11 U.S.C. § 1328 and Application for Entry of Discharge. Before any discharge may be entered, the debtor must comply with the requirements of the Certification of Compliance and file the certification with the court.
- (2) Instructional Course on Personal Financial Management. Debtor must also file a certification that an instructional course concerning personal financial management, as required by 11 U.S.C. § 1328(g)(1), has been completed or that completion of such course is not required under 11 U.S.C. § 1328(g)(2).
- (3) Case Closure Without Discharge. If the certifications required by this subsection have not been filed within 60 days of the notice provided under subsection (t)(1) of this rule, then the case may be closed without an entry of discharge.

(u) **Attorney Representation.**

- (1) Scope of Employment. LBR 2090-1(a) is modified in chapter 13 cases as follows: Any attorney who is retained to represent a debtor in a chapter 13 case is responsible for representing the debtor on all matters arising in the case, other than adversary proceedings, subject to the provisions of a "Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys," into which the debtor and the attorney have entered and that complies with these rules.
- (2) Debtor Unavailable or Unopposed to Request, Application, or Motion Scheduled for Hearing. If an attorney for a debtor is unable to contact the debtor in connection with a request, application or motion (*e.g.*, a motion for relief from the automatic stay) that is scheduled for a hearing, the attorney may file and serve a statement informing the court of this fact. If a debtor does not oppose the request, application or motion, the attorney may file a statement so informing the court and need not appear at the hearing.

- (3) Change of Address. An attorney representing a chapter 13 debtor must provide written notice to the chapter 13 trustee and to the court of any change to the attorney's address during the pendency of the case as required by LBR 2090-1(f).

(v) Attorneys' Fees.

- (1) Rights and Responsibilities Agreement. The use of court-approved form F 3015-1.7, Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys ("RARA") in any case is optional. However, if the debtor's attorney elects to proceed under the RARA, the RARA form is mandatory. If the RARA form is signed by the attorney and the debtor, filed, and served on the chapter 13 trustee, the fees and included costs (excluding the petition filing fee) outlined therein may be approved without further detailed fee application or hearing, subject to the terms of both the RARA and the Guidelines for Allowance of Attorneys' Fees in Chapter 13 Cases ("Guidelines") adopted by the court.
- (2) Duties of Debtors and their Attorneys if the RARA is Signed, Filed, and Served. The RARA sets forth the duties and obligations that must be performed by the debtor and debtor's attorney, both before and after the case is filed and before and after confirmation of a plan, if the parties elect to use the RARA. The RARA also specifies the fees that the attorney will charge and the procedures for seeking and objecting to payment of fees. An attorney who elects to use the RARA may not charge more than the maximum fees outlined in subsection (v)(1) of this rule for performing services described in bold face type in the RARA. If the attorney performs tasks on behalf of the debtor not set forth in bold face, the attorney may apply to the court for additional fees and costs, but such applications will be reviewed by both the chapter 13 trustee and the court. Counsel may apply for additional fees if and when justified by the facts of the case.

An application for additional fees and costs must be made by noticed motion subject to subsections (w) and (x) of this rule. The application must be supported by evidence of the nature, necessity, and reasonableness of the additional services rendered and expenses incurred. When additional fees are sought, the court may, in its discretion, require additional supporting information or require a hearing, even though no opposition is filed. In such application, the applicant must disclose to the court any fees paid or costs reimbursed by the debtor and the source of those payments.

If the parties elect to utilize the RARA, the lists of duties and obligations set forth in the RARA may not be modified by the parties. Other portions of the RARA may be modified in the following respects only: (A) the attorneys' fees provided for in the RARA may be reduced; and (B) the agreement may be supplemented to include any additional agreements that may exist between the parties concerning the fees and expenses that the attorney will charge for performing services required by the RARA that are not in bold face type.

- (3) Debtor's Signature. The debtor's signature on the RARA certifies that the debtor has read, understands, and agrees to the best of the debtor's ability to carry out the terms of the RARA and has received a signed copy of the RARA.

- (4) Attorney's Signature. The attorney's signature on the RARA certifies that before the case was filed the attorney personally met with, counseled, and explained to the debtor all matters set forth in the RARA and verified the number and status of any prior bankruptcy case(s) filed by the debtor or any related entity, as set forth in LBR 1015-2. The RARA does not constitute the written fee agreement contemplated by the California Business and Professions Code.
- (5) An Attorney May Elect to be Paid other than Pursuant to the RARA and the Guidelines. At any time, whether or not a RARA is on file in any case, the debtor's attorney may elect to seek an allowance of fees and costs other than pursuant to the RARA and the Guidelines. In that event, the attorney must file and serve an application for fees in accordance with 11 U.S.C. §§ 330 and 331, FRBP 2016 and 2002, and LBR 2016-1 and 3015-1, as well as the "Guide to Applications for Professional Compensation" issued by the United States trustee for the Central District of California.
- (6) Court Review of any Attorney's Fee. Upon notice and opportunity for hearing, the court may review any attorney's fee agreement or payment, in accordance with 11 U.S.C. § 329 and FRBP 2017.
- (7) Payment of Fees Upon Dismissal. Unless otherwise ordered by the court, the chapter 13 trustee must disburse to the debtor's attorney as soon as practicable after dismissal any portion of the balance on hand which has been tendered to the chapter 13 trustee for payment of the RARA fees, provided:
- (A) A RARA was signed by the debtor's attorney and the debtor, filed, and served on the chapter 13 trustee; and
- (B) The debtor's case is dismissed prior to or at the hearing on confirmation of the plan.
- (w) **Motions and Applications Filed on Notice of Opportunity to Request a Hearing**.
- (1) Motions and Applications. The following motions and applications may be made on notice of opportunity to request a hearing pursuant to LBR 9013-1(o):
- (A) Chapter 13 trustee's motion to modify a confirmed plan or dismiss a case;
- (B) Motion to modify a confirmed plan or to suspend or extend plan payments, subject to subsections (n) and (x) of this rule, provided that ~~20~~ 21 days notice of the motion is given in accordance with FRBP 3015(g);
- (C) Motion for approval of sale or refinancing of debtor's residence, subject to subsection (p) of this rule, if the entire equity therein is exempt from the claims of creditors; provided, however, notice is not required if the sale or refinance will pay off the plan and the plan allows 100% to the unsecured claims; and

- (D) Application for supplemental attorney's fees, subject to subsections (u), (v) and (x) of this rule.
- (2) No Response Filed. If no response has been timely filed and served with respect to a motion or application listed in subsection (w)(1) of this rule, or the chapter 13 trustee's only response is to take no position, the provisions of LBR 9013-1(o)(3) must be complied with, subject to the following modifications:
- (A) Motion to Modify a Confirmed Plan or to Suspend or Extend Plan Payments. The declaration must also attest that the chapter 13 trustee did not timely file and serve a response to the motion, and the declaration and proposed order must be served on the chapter 13 trustee.
- (B) Application for Supplemental Fees. The declaration must attest that the chapter 13 trustee did not timely file and serve a response to the application, or took no position, and the declaration and proposed order must be served on the chapter 13 trustee.
- (3) Response Filed. If a response is filed with respect to any motion or application listed in subsection (w)(1) of this rule, the provisions of LBR 9013-1(o)(4) must be complied with, subject to the following modifications:
- (A) Trustee's Motion to Dismiss a Case; Trustee's Motion to Modify a Confirmed Plan. The person or entity who timely files and serves a response to a trustee's motion to dismiss a case, or a trustee's motion to modify a confirmed plan, must obtain a hearing date from the court (or use the court's self-calendaring system) and serve notice of the hearing with the response.
- (B) Debtor's Motion to Modify a Confirmed Plan or Suspend or Extend Plan Payments. If the chapter 13 trustee timely files and serves any comments regarding the motion, the chapter 13 trustee must promptly lodge a proposed order, electronically via LOU, using court-mandated form F 3015-1.12, and serve the proposed order on the debtor (and debtor's attorney, if any).
- (C) Application for Supplemental Fees. If the chapter 13 trustee timely files and serves any comments regarding the application, the chapter 13 trustee must promptly lodge a proposed order, electronically via LOU, using court-mandated form F 3015-1.12, and serve the proposed order on the applicant.
- (x) **Service of Motions and Applications**. All motions and applications must be served, subject to the electronic service provisions of LBR 9036-1, on the chapter 13 trustee, debtor (and debtor's attorney, if any), and all creditors, with the following exceptions:
- (1) A chapter 13 trustee's motion to dismiss a case need be served only on the debtor, debtor's attorney (if any), any prior chapter 7 trustee, and that trustee's attorney (if any);

- (2) An objection to a claim need be served only on the chapter 13 trustee, the claimant, and the claimant's attorney (if any). If the claimant is the United States or an officer or agency of the United States, the objection must be served as provided in FRBP 7004(b)(4) and (5) and LBR 2002-2;
- (3) A motion for modification, suspension, or extension of the due date of plan payments must be filed using court-mandated forms and must be served on the chapter 13 trustee, but need not be served on creditors if: (A) the proposed modification does not have an adverse effect on the rights of creditors; or (B) the proposed suspension or extension, combined with any prior approved suspensions or extensions, does not exceed 90 days of suspended payments or 90 days of extensions to the plan's term. Any other motion for modification, suspension, or extension must be served on all creditors pursuant to LBR 9013-1(o) in addition to being served on the chapter 13 trustee;
- (4) A motion regarding the stay of 11 U.S.C. § 362, which is subject to the notice and service requirements of LBR 4001-1; and
- (5) An application by debtor's counsel for additional fees and costs not exceeding \$1,000 over and above the limits set forth in the RARA and Guidelines need be served only on the chapter 13 trustee and the debtor.

LBR 3016-1. FORM OF CHAPTER 11 PLAN

Unless otherwise ordered, a plan of reorganization filed with the court may, but need not, conform with court-approved form F 3018-1, Form of Chapter 11 Plan.

LBR 3016-2. FORM OF CHAPTER 11 DISCLOSURE STATEMENT

Unless otherwise ordered, a disclosure statement filed with the court may, but need not, conform with court-approved form F 3017-1, Chapter 11 Disclosure Statement Form.

LBR 3017-1. CHAPTER 11 DISCLOSURE STATEMENT – APPROVAL IN CASE OTHER THAN SMALL BUSINESS CASE

- (a) **Notice of Hearing on Motion for Approval of Disclosure Statement.** A hearing on a motion for approval of a disclosure statement must not be set on less than 36 days notice, unless the court, for good cause shown, prescribes a shorter period.
- (b) **Objections to Disclosure Statement.** Objections to a disclosure statement must be filed and served on the proponent not less than ~~++~~ 14 days before the hearing, unless otherwise ordered by the court.

LBR 3017-2. CHAPTER 11 DISCLOSURE STATEMENT – APPROVAL IN SMALL BUSINESS CASE

- (a) **Conditional Approval of Disclosure Statement.** The court may, on application of the plan proponent or *sua sponte*, conditionally grant a motion for approval of a disclosure statement filed in accordance with 11 U.S.C. § 1125(f) and FRBP 3016.

- (b) **Procedure for Requesting Conditional Approval of Disclosure Statement.** The plan proponent may file an *ex parte* motion for conditional approval of the disclosure statement, asking that the hearing on the adequacy of the disclosure statement be combined with the hearing on confirmation. The motion must be supported by a declaration establishing grounds for conditional approval and accompanied by a proposed order consistent with FRBP 2002(b) that conditionally approves the disclosure statement and establishes:
- (1) A date by which the holders of claims and interests may accept or reject the plan;
 - (2) A date for filing objections to the disclosure statement;
 - (3) A date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
 - (4) A date for the hearing on confirmation of the plan.
- (c) **Objections and Hearing on Final Approval.**
- (1) The debtor must file and serve a notice of the dates set forth above, together with a copy of the disclosure statement and plan, on all creditors and the United States trustee.
 - (2) Final approval of the disclosure statement is required only when a timely objection is filed and served on the debtor, the trustee (if any), any committee appointed under the Bankruptcy Code, counsel for any of the foregoing, and any other entity as ordered by the court.

LBR 3018-1. BALLOTS – VOTING ON CHAPTER 11 PLAN

- (a) **Ballot Summary.** The plan proponent must:
- (1) Tabulate the ballots of those accepting or rejecting the plan;
 - (2) File a ballot summary not later than 1 day before the hearing on the motion for order confirming the plan. The ballot summary must be signed by the plan proponent and must certify to the court the amount and number of allowed claims of each class voting to accept or reject the plan and the amount of allowed interests of each class voting to accept or reject the plan; and
 - (3) Make available at the hearing all of the original ballots for inspection and review by the court and any interested party.
- (b) **Amended Ballot Summary.** In addition to the requirements set forth in subsection (a) of this rule, the court may order an amended ballot summary to be filed with the original ballots attached.

LBR 3020-1. CHAPTER 11 PLAN CONFIRMATION

- (a) **Payment of Special Charges.** The proposed plan confirmation order must be accompanied by proof of payment of any and all special charges due to the clerk's office. The amount of the charges to be paid may be obtained from the courtroom deputy of the judge hearing the case.
- (b) **Postconfirmation Requirements.** Unless otherwise provided in the plan, every order confirming a chapter 11 plan must contain the following language:

“Within 120 days of the entry of this order, _____ shall file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report shall be served on the United States trustee, the 20 largest unsecured creditors, and those parties who have requested special notice. Further reports shall be filed every ____ days thereafter and served on the same entities, unless otherwise ordered by the court. [Optional depending on practices of particular judge: A postconfirmation status conference will be held on _____, 20__ at __.m. in Courtroom _____.]

The status report shall include at least the following information:

- (1) A schedule listing for each debt and each class of claims: the total amount required to be paid under the plan; the amount required to be paid as of the date of the report; the amount actually paid as of the date of the report; and the deficiency, if any, in required payments;
- (2) A schedule of any and all postconfirmation tax liabilities that have accrued or come due and a detailed explanation of payments thereon;
- (3) Debtor's projections as to its continuing ability to comply with the terms of the plan;
- (4) An estimate of the date for plan consummation and application for final decree; and
- (5) Any other pertinent information needed to explain the progress toward completion of the confirmed plan.

Reporting entities whose equity securities are registered under Section 12(b) of the Securities Exchange Act of 1934 may provide information from their latest 10Q or 10K filing with the S.E.C., if it is responsive to the requirements of this subsection.

Unless otherwise provided in the plan, if the above-referenced case is converted to one under chapter 7, the property of the reorganized debtor shall be revested in the chapter 7 estate, except that, in individual cases, the postpetition income from personal services and proceeds thereof, and postconfirmation gifts or inheritances pursuant to 11 U.S.C. §§ 541(a)(5)(A), 541(a)(6), 1115(a) or 1115(b), shall not automatically revest in the chapter 7 estate.”

- (c) **Effect of Failure to File Postconfirmation Reports.** The failure to file timely the required reports is cause for dismissal or conversion to a case under chapter 7 pursuant to 11 U.S.C. § 1112(b).

- (d) **Final Decree in Chapter 11 Case.**
 - (1) After an estate is fully administered in a chapter 11 reorganization case, a party in interest may file a motion for a final decree in the manner provided in LBR 9013-1(o).

 - (2) Notice of the motion must be served upon all parties upon whom the plan was served.

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LBR 4001-1. STAY OF 11 U.S.C. § 362

- (a) **General.** Except as provided by this rule, the requirements of LBR 9013-1 through LBR 9013-4 apply to a motion for relief from the automatic stay, extension of the stay, imposition of the stay, or confirmation that the stay is terminated or no longer in effect. If the motion is filed in a chapter 13 case, the moving party must also comply with LBR 3015-1(r).
- (b) **Form.**
- (1) **Motions.** An entity seeking relief from the automatic stay, extension of the stay, imposition of the stay, or confirmation that the stay is terminated or no longer in effect, must file a motion using the court-mandated F 4001-1 series of form motions. The failure to use the mandatory forms may result in the denial of the motion or the imposition of sanctions.
- (2) **Orders.** In addition to the requirement that all orders on § 362 motions comply with LBR 9021-1:
- (A) **Mandatory Form Orders.** Any order granting relief from the automatic stay, extension of the stay, imposition of the stay, or confirming that the stay is terminated or no longer in effect, must be lodged using the court-mandated F 4001-1 series of form orders. The failure to use the mandatory form orders may result in the court not signing or entering the order; and
- (B) **Motions Settled by Stipulation.** Any order granting a motion regarding the stay, as settled by stipulation, must be prepared using the court-mandated F 4001-1 series of form orders and is exempt from the requirements of LBR 9021-1(b)(2). Compliance with the CM/ECF Procedures and Court Manual is required regarding signatures of parties and/or counsel to the stipulated terms.
- (c) **Motion for Relief from Automatic Stay.**
- (1) **Filing and Service.** The motion, notice of hearing, and all supporting papers must be served by the moving party in the time and manner prescribed in LBR 9013-1 on the following parties:
- (A) **Residential Unlawful Detainer Motions.** If the motion seeks relief from the stay to proceed with an unlawful detainer action involving a residential property with a month-to-month tenancy, tenancy at will, or a tenancy terminated by an unlawful detainer judgment, the movant must serve only the debtor and debtor's attorney (if any).
- (B) **Other Relief from Automatic Stay Motions.** In all other cases, the movant must serve:
- (i) The debtor and debtor's attorney (if any);

- (ii) The trustee or interim trustee (if any);
 - (iii) Any applicable codebtor where relief is sought from the codebtor stay under 11 U.S.C. §§ 1201 or 1301;
 - (iv) If relief is sought as to property of the estate, the holder of a lien or encumbrance against the subject property that is known to the movant, scheduled by the debtor, or appears in the public record; and
 - (v) Any other party entitled to notice under FRBP 4001.
- (2) Hearing. Unless the court orders otherwise at the time of the hearing, the preliminary hearing under 11 U.S.C. § 362(e) is consolidated with the final hearing under 11 U.S.C. § 362(d).
- (3) Continuance By Stipulation. A stipulation by the moving party to continue a hearing under 11 U.S.C. § 362(d) to a later date is deemed a waiver of the applicable portions of 11 U.S.C. § 362(e) until the conclusion of the hearing on such later date. Unless otherwise ordered, an order by the court to continue a hearing under 11 U.S.C. § 362 to a later date is deemed to include an order continuing the stay in effect until the conclusion of the hearing on such later date.
- (4) Separate Motion. A motion for relief from the automatic stay must be filed separately from, and not combined in the same pleading with, any other request for relief, unless otherwise ordered by the court.
- (d) Motion for Extension or Imposition of Stay**
- (1) An entity seeking an extension of the stay under 11 U.S.C. § 362(c)(3)(B) or imposition of the stay under 11 U.S.C. § 362(c)(4)(B) must file a motion and serve the motion, notice of hearing, and supporting papers as provided in subsection (c)(1) of this rule and upon all other parties in interest against whom extension or imposition of the stay is sought.
- (2) The motion must be filed promptly after the petition date to be timely considered and, if necessary, accompanied by a separate motion under LBR 9075-1(b) for a hearing on shortened notice.
- (e) Motion for Order Confirming Termination of Automatic Stay**
- (1) An entity requesting an order under 11 U.S.C. § 362(j) confirming termination of the automatic stay must file a motion supported by a declaration containing competent evidence establishing that the stay has terminated or was never in effect under 11 U.S.C. § 362(c).
- (2) The motion and supporting declaration must be served as provided in subsection (c)(1) of this rule.

(f) **Deposit of Rent under 11 U.S.C. § 362(l).**

- (1) Any rent deposited with the clerk of the court pursuant to 11 U.S.C. § 362(l)(1)(B) must be in the form of a certified or cashier's check or money order payable to the lessor or landlord in the amount of any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
- (2) The rent must be deposited with the clerk of the court at the time the bankruptcy petition is filed. The rent deposit and the bankruptcy petition must be accompanied by a copy of the judgment for possession.
- (3) As the certification to be filed and served pursuant to 11 U.S.C. § 362(l)(2), debtor may use the court-approved form F 4001-1.2, Debtor's Further Certification of Cure of Monetary Default Underlying Judgment for Possession of Residential Property and Proof of Deposit (11 U.S.C. § 362(l)(2)). This certification must be filed and served within 30 days after the filing of the bankruptcy petition in accordance with 11 U.S.C. § 362(l)(2).
- (4) Pursuant to 11 U.S.C. § 362(l)(5)(D), the clerk will transmit the payment to the lessor at the address listed in the section on page 2 of the bankruptcy petition entitled "Statement by a Debtor Who Resides as a Tenant of Residential Property."

- (g) **Relief from Automatic Stay to Proceed in Another Forum.** If the court grants a motion to lift the automatic stay and to proceed in another forum, the prevailing party must promptly file a copy of the entered order in that forum.

LBR 4001-2. CASH COLLATERAL AND FINANCING ORDERS

- (a) **General.** The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion to obtain credit or to approve the use of cash collateral, debtor in possession financing, and/or cash management under 11 U.S.C. §§ 363 or 364 (collectively, "Financing Motion"), except as provided by this rule.
- (b) **Provisions to be Identified.** To the extent not otherwise required by FRBP 4001(b)(1)(B) and (c)(1)(B), a Financing Motion must identify whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision that:
- (1) Grants cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (*i.e.*, clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);
 - (2) Binds the estate or all parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or debt or the waiver of claims against the secured creditor;
 - (3) Waives or limits the estate's rights under 11 U.S.C. § 506(c);

- (4) Grants to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, or 549;
 - (5) Deems prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);
 - (6) Provides disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor with respect to a professional fee carve out; or
 - (7) Primes any secured lien. If an order is sought to prime a lien, the Financing Motion must:
 - (A) Identify the location of any such provision in the proposed form of order, cash collateral stipulation, and/or loan agreement; and
 - (B) Contain specific justification for the priming of the lien.
- (c) **Summary of Essential Terms.** The Financing Motion must include a summary of the essential terms of the proposed credit, use of cash collateral, or debtor in possession financing (*e.g.*, the interim borrowing limit, the maximum borrowing available on a final basis, borrowing conditions, interest rate, maturity dates, events of default, use of funds limitations, and protections afforded under 11 U.S.C. §§ 363 and 364).
- (d) **Use of Form for Cash Collateral and/or Debtor in Possession Financing Stipulations.** Each Financing Motion requesting approval of a stipulation for credit, use of cash collateral, or debtor in possession financing must be accompanied by court-approved form F 4001-2, Statement Pursuant to Local Bankruptcy Rule 4001-2, or a statement consistent with court-approved form F 4001-2.
- (e) **Interim Relief.** The court may grant interim relief to prevent immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court will not approve an interim order that includes any of the provisions described in subsection (b)(1)-(7) of this rule.
- (f) **Final Orders.** A final order will be entered only after notice and a hearing pursuant to FRBP 4001(b). Ordinarily, the final hearing will be held at least ~~10~~ 14 days after the appointment of the creditors' committee contemplated by 11 U.S.C. § 1102.

LBR 4003-2. LIEN AVOIDANCE

- (a) **General.** The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion to avoid a lien or other transfer of property pursuant to 11 U.S.C. § 522(f), except as provided by this rule.
- (1) A motion to avoid a lien or other transfer of property under 11 U.S.C. § 522(f)

may be brought under either LBR 9013-1(a) or LBR 9013-1(o).

- (2) ~~All other proceedings to avoid a lien must be brought by adversary proceeding.~~ A motion to sell property free and clear of liens under 11 U.S.C. § 363(h) does not constitute a “proceeding to avoid a lien” within the meaning of this rule.

(b) **Form.**

- (1) The creditor whose lien is to be avoided must be identified in the title or caption of the notice and motion (*e.g.*, Motion to Avoid Lien of XYZ Co. under 11 U.S.C. § 522(f)). The notice and motion must contain a single caption and be filed in the underlying bankruptcy case. A double caption must not be used nor will a separate reference number be assigned.

- (2) If the motion seeks to avoid a lien on real property, the motion and proposed order must include the legal description of the real property.

(c) **Service.**

- (1) The motion, notice, and supporting papers must be served on the holder of the lien to be avoided in the same manner as a summons and complaint under FRBP 7004.

- (2) The motion, notice, and supporting papers also must be served on any other holder of a lien or encumbrance against the subject property.

(d) **Evidence.** The motion must be accompanied by a declaration or other competent evidence establishing:

- (1) The balance remaining on the creditor’s loan;
- (2) The fair market value of the subject property;
- (3) The identity of any other holder of a lien encumbering the subject property and the amount due and owing on such lien;
- (4) The specific statutory authority for the claimed exemption; and
- (5) The value or amount claimed exempt.

LBR 4008-1. REAFFIRMATION AGREEMENTS

- (a) **Form.** A reaffirmation agreement must conform to Official Form 240A-Reaffirmation Agreement. If the reaffirmation agreement concerns a secured debt, a complete and legible copy of the security agreement, including the front and back of each page, must be attached.

- (b) **Reaffirmation without Representation or Certification by Debtor’s Attorney.** In a case where the debtor is not represented by an attorney, or where the attorney is unwilling

or unable to sign Part C: Certification by Debtor’s Attorney, the debtor must move for approval of the reaffirmation agreement by the court by completing Part E: Motion for Court Approval of Official Form 240A.

(c) **Deadline for Filing.** A reaffirmation agreement and a motion for approval of the reaffirmation agreement under 11 U.S.C. § 524 must be filed by the debtor or creditor within 60 days following the conclusion of the first meeting of creditors under 11 U.S.C. § 341(a), unless otherwise ordered by the court.

(d) **Hearing and Approval by Court.**

(1) The clerk will set a hearing on the motion for approval of the reaffirmation agreement and give notice to the debtor and creditor of the date, time, and place of such hearing if:

(A) The debtor was not represented by an attorney or the attorney representing the debtor was unwilling or unable to sign Part C: Certification by Debtor’s Attorney; or

(B) Where a presumption of undue hardship arising under 11 U.S.C. § 524(m)(1) is not rebutted by the debtor to the satisfaction of the court.

(2) The court will not grant a motion to approve a reaffirmation agreement unless the debtor appears in person at the hearing to respond to questions by the court.

(3) Under all other circumstances, unless otherwise ordered by the court, court approval is not required in a case where the debtor was represented by an attorney during the negotiation of the reaffirmation agreement.

LBR 5003-2. RECORDS AND FILES**(a) Records and Files.**

- (1) When Order Required. No records or objects belonging to the files of the court may be taken from the office or custody of the clerk except upon written order of the court.
- (2) Form of Receipt. Any person removing records pursuant to this rule must give the clerk a receipt containing the following information:
 - (A) The name, address, and telephone number of the person removing the records or objects;
 - (B) An itemized description of the records or objects removed;
 - (C) The date of removal;
 - (D) The place in which records or objects will be used or kept; and
 - (E) The estimated date of return to the clerk of the records or objects.
- (3) Exception for Court Staff. The provisions of this rule do not apply to a judge, members of a judge's staff, magistrate judge, court recorder, clerk, clerk's staff, or courtroom deputy requiring records or objects in the exercise of their official duties. Any court officer removing records or objects must provide the clerk with a receipt in the form required by subsection (a)(2) of this rule.

(b) Removal of Contraband.

Contraband of any kind coming into the possession of the clerk must be turned over to an appropriate governmental agency which will destroy or otherwise dispose of the contraband as provided by law. The agency must give the clerk a receipt for the contraband in the form required by subsection (a)(2) of this rule.

(c) Confidential Court Records.

- (1) Filing under Seal. Subject to 11 U.S.C. § 107, a paper may not be filed under seal without a prior written order of the court. If a filing under seal is requested, a written motion and a proposed order must be presented to the judge along with the paper submitted for filing under seal. The proposed order must authorize the sealing of the paper and, if appropriate, the motion and order as well. The original and judge's copy of the paper must be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Copies to be conformed need not be placed in sealed envelopes. The motion, paper submitted for filing under

seal, and proposed order must not be filed by electronic means. The documents must be filed with the court non-electronically. If the court denies the motion, the paper submitted to be filed under seal will be returned to the movant unless otherwise ordered.

- (2) **Disclosure of Sealed Papers.** No sealed or confidential record of the court maintained by the clerk will be disclosed except upon written order of the court. A party seeking disclosure of sealed or confidential court records must file and serve a motion pursuant to LBR 9013-1. The motion must state with particularity the need for specific information in such records.

LBR 5005-1. FILING PAPERS – REQUIREMENTS

A paper delivered for filing to the clerk will be accepted if accompanied by any required fee and signature, except as provided in LBR 1002-1(d)(1) and LBR 1006-1.

LBR 5005-2. FILING PAPERS – NUMBER OF COPIES

- (a) **Number of Copies.** For papers that are not electronically filed under the provisions of LBR 5005-4, a list of requirements that specify the minimum number of copies that must be submitted is contained in the Court Manual available from the clerk and on the court's website.
- (b) **Conformed Copies.** A copy filed with the court must conform to the original, including either a photocopy of a fully executed signature page, or an unsigned signature page that bears a conformed signature or a notation that the original was signed. A conformed copy must be identical to the original in content, pagination, additions, deletions, interlineations, attachments, exhibits, and tabs.
- (c) **Request for Court Conformed Copy.** A maximum of 3 copies will be conformed by the clerk's office to show filing or lodging. Copies to be conformed by the clerk's office may consist of either the entire paper or only the first page of the filed paper. The clerk's office is not responsible for verifying that any copy presented for conforming is a true and correct copy of the filed paper. If the party presenting a paper requests the clerk to return a conformed copy by United States mail, an extra copy must be submitted by the party for that purpose, accompanied by a postage-paid, self-addressed envelope.
- (d) **Judge's Copy.** A paper copy of any document filed with the court, either electronically or non-electronically, must be marked "Judge's Copy" and served on the judge in chambers in the manner and not later than the deadline set forth in the Court Manual available from the clerk and on the court's website.
- (1) The judge's copy must meet the requirements of LBR 9004-1(a). Exhibits to the judge's copy must be tabbed.
- (2) If the document is filed electronically, a judge's copy must be accompanied by a copy of the NEF confirming the filing of the original document.

LBR 5005-4. ELECTRONIC FILING

- (a) **Mandatory Electronic Filing.** Except as provided in subsection (c) of this rule, all papers submitted in any case or proceeding must be filed electronically, signed or verified by electronic means in compliance with the court's CM/ECF Procedures contained in the Court Manual available from the clerk and on the court's website.
- (b) **CM/ECF Procedures Control.** In the event of a conflict between these rules and the CM/ECF Procedures, the current version of the CM/ECF Procedures will control.
- (c) **Exceptions to Mandatory Electronic Filing Requirement.**
- (1) **Pro Se Exception.** A person who is not represented by an attorney may file and serve papers non-electronically.
- (2) **Limited Exception for Attorneys.**
- (A) An attorney who files papers in fewer than 5 bankruptcy cases or adversary proceedings in a single calendar year may file and serve papers non-electronically.
- (B) An attorney who files non-electronically papers capable of being filed electronically in 5 or more bankruptcy cases or adversary proceedings in a single calendar year *must thereafter* file papers electronically through the court's CM/ECF system.
- (C) The court reserves the right in its sole discretion to revoke this limited exception at any time upon notice to the attorney.
- (3) **Paper Filed under Seal.** A motion, paper submitted for filing under seal, and proposed order must be filed non-electronically pursuant to LBR 5003-2(c)(1).

LBR 5010-1. REOPENING CASES

- (a) **Motion.** A motion to reopen a closed bankruptcy case must be supported by a declaration establishing cause therefor. The motion must not contain a request for any other relief.
- (b) **Separate Motion or Adversary Proceeding.**
- (1) A request for any relief other than the reopening of a case, including relief based upon the grounds for reopening the case, must be made in a separate motion or adversary proceeding, which may be filed concurrently with the motion to reopen.
- (2) This subsection does not apply to a motion to reopen a case solely for the purpose of seeking an extension of time to file Official Form 23, Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management.

- (c) **Notice.** The movant must give notice of the motion to any former trustee in the case and the United States trustee.
- (d) **Fee.** If a fee is required, the movant must pay the fee upon the filing of the motion to reopen, unless otherwise ordered by the court.
- (e) **Ex Parte Consideration.** A motion to reopen may be considered *ex parte*. The movant must not calendar a hearing date nor will a hearing be held on the motion, unless otherwise ordered by the court.
- (f) **Assignment.** The motion will be assigned to the judge to whom the case was last assigned, if still in office; otherwise, the motion will be assigned at random by the clerk to a judge to hear and rule upon the request.
- (g) **Closing of Case.** If no motion or adversary proceeding is pending 30 days after the case is reopened and if no trustee has been ordered appointed, the case may be closed without further notice.

LBR 5011-1. WITHDRAWAL OF REFERENCE

- (a) **General.** Pursuant to 28 U.S.C. § 157(a), the district court refers to the bankruptcy court for this district all cases under title 11 and all proceedings under title 11 or arising in or related to a case under title 11.
- (b) **Procedure.** A motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d) must be filed with the clerk of the district court. The motion must comply with Rule 6.1 of Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.

LBR 5073-1. PHOTOGRAPHY, RECORDING DEVICES, AND BROADCASTING

- (a) **Prohibition of Broadcasting, Television, and Photography.** Unless otherwise ordered by the court, between 7:00 a.m. and 7:00 p.m., Monday through Friday, and at all other times when the court is in session, the use of any form, means, or manner of radio or television broadcasting and the taking or making of photographs, motion pictures, video, or sound recordings is prohibited in:
 - (1) Any and all courtrooms occupied by any judge;
 - (2) Any and all chambers assigned to any judge;
 - (3) Any and all areas used by the clerk and court staff;
 - (4) Any garage or parking facility reserved for the judges or their staff; and
 - (5) All hallways and public areas adjacent to the above-specified locations.

- (b) **Exceptions.** This rule does not prohibit:
- (1) Recordings made by official court recorders in the performance of their official duties. No other use may be made of an official recording of a court proceeding without an express, written order of the court;
 - (2) The taking of photographs, when specifically authorized in writing, at ceremonial or non-judicial functions in the chambers of a judge of this court;
 - (3) The videotaping or other electronic recording of depositions for trial purposes, nor the preparation and perpetuation of testimony taken by, or under the direction of, a judge of this court or a visiting judge. No part of such videotape or other electronic recording may be used without an express, written order of the court; or
 - (4) The possession of video or sound recording, photographic, radio, or television broadcasting equipment. Any equipment taken into or through the areas enumerated in this rule is subject to such security regulations as may be adopted from time to time by the court.
- (c) **Enforcement of Rule.** The United States Marshal, the General Services Administration police, and the security force contracted for service by the court enforce the provisions of this rule. A violation of this rule constitutes contempt of court.

LBR 5075-1. MOTIONS FOR ADMINISTRATIVE ORDERS PURSUANT TO 28 U.S.C. § 156(c)

- (a) **General.** This rule applies to motions by which a party in interest seeks an order from the bankruptcy court approving employment of persons or entities to perform certain duties of the clerk’s office, the debtor, or the debtor in possession such as (1) processing proofs of claim and maintaining the claims register; (2) serving notices; (3) scanning documents; or (4) providing photocopies of documents filed in the case (collectively, “administrative order”).
- (b) **Procedure.** A motion for administrative order must include a completed declaration on court-mandated form F 5075-1.1, Declaration to be Filed with Motion Establishing Administrative Procedures Re 28 U.S.C. § 156(c) with the completed Mega Case Procedures Checklist attached thereto. A copy of the motion, including the declaration and checklist, must also be provided to the clerk’s office at the time the motion is filed. Movant’s counsel must consult with the clerk’s office in completing the checklist to the satisfaction of the clerk’s office. Unless the judge to whom the case is assigned orders otherwise, any such motion that is not accompanied by the completed checklist may be denied by the court and any hearing thereon previously scheduled may be vacated.

LBR 5095-1. INVESTMENT OF ESTATE FUNDS**(a) Notice.**

- (1) The trustee or debtor in possession must give not less than ~~15~~ 14 days written notice of a proposed investment of bankruptcy estate funds in a Designated Fund to the United States trustee, the debtor (if a trustee has been appointed), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, and any other party in interest entitled to notice under FRBP 2002, unless the court for cause shown shortens the time or otherwise modifies or limits notice pursuant to a motion under LBR 9075-1.
- (2) The notice must state that any objection or request for hearing must be filed and served not more than ~~15~~ 14 days after service of the notice, unless the notice specifies a longer period, or unless otherwise ordered by the court.
- (3) If an objection and request for hearing is not filed and served within such ~~15~~ 14-day period, the trustee or debtor in possession may proceed with the investment. An order is not required nor will an order be entered under this rule.

(b) Objection and Request for Hearing. If a timely objection and request for hearing is filed and served, the trustee or debtor in possession must, within ~~20~~ 21 days from the date of service of such objection, obtain and give not less than ~~11~~ 14 days notice of the hearing to each objecting party and to the United States trustee.**(c) Designated Fund.** For purposes of this rule, a "Designated Fund" is an open-end management investment company registered under the Investment Company Act of 1940 and regulated as a "money market fund" pursuant to Rule 2a-7 under the Investment Company Act of 1940, that:

- (1) Invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements;
- (2) Has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor's or Moody's;
- (3) Has agreed to redeem fund shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of Federal Reserve Banks or the New York Stock Exchange; and
- (4) Has adopted a policy that it will notify its shareholders 60 days prior to any change in its investment and redemption policies under subsections (c)(1) and (3) of this rule.

LBR 6004-1. SALE, USE, OR LEASE OF ESTATE PROPERTY

- (a) **General.** The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion for an order establishing procedures for the sale of estate assets and a motion seeking authorization to sell, use or lease estate property, except as provided by this rule.
- (b) **Motion for Order Establishing Procedures for the Sale of Estate Property.**
- (1) **Timing of Hearing.** A hearing on a Motion to Establish Procedures for the Sale of the Estate’s Assets (“Sale Procedure Motion”) may be scheduled on not less than ~~5~~ 7 days notice to applicable parties, unless an order shortening the time for a hearing is obtained under LBR 9075-1(b).
- (2) **Contents of Notice.** The notice must describe the proposed bidding procedures and include a copy of the proposed purchase agreement. If the purchase agreement is not available, the moving party must describe the terms of the sale proposed, when a copy of the actual agreement will be filed with the court, and from whom it may be obtained. The notice must describe the marketing efforts undertaken and the anticipated marketing plan, or explain why no marketing is required. The notice must provide that opposition is due on or before 1 day prior to the hearing, unless otherwise ordered by the court.
- (3) **Service of the Notice and Motion.** The moving party must serve the motion and notice of the motion and hearing by personal delivery, messenger, telephone, fax, or e-mail to the parties to whom notice of the motion is required to be given by the FRBP or by these rules, any other party that is likely to be adversely affected by the granting of the motion, and the United States trustee. The notice of hearing must state that any response in opposition to the motion must be filed and served at least 1 day prior to the hearing, unless otherwise ordered by the court.
- (4) **Opposition.** Any opposition and accompanying memorandum of points and authorities and declarations must be filed and served at least 1 day prior to the hearing, unless otherwise ordered by the court. Papers filed in opposition to the motion must be served by personal delivery, messenger, fax, or e-mail. A judge’s copy of the opposition must be served on the judge in chambers in accordance with LBR 5005-2(d).
- (5) **Scheduling Hearing on the Sale.** A date and time for a hearing on the motion to approve the sale itself may be obtained at or prior to the hearing on the Sale Procedure Motion. The hearing must be scheduled, if practicable, no more than 30 days following the hearing on the Sale Procedure Motion.
- (6) **Break-up Fees.** If a break-up fee or other form of overbid protection is requested in the Sale Procedure Motion, the request must be supported by evidence establishing:
- (A) That such a fee is likely to enhance the ultimate sale price; and
- (B) The reasonableness of the fee.

(c) **Motion for Order Authorizing the Sale of Estate Property.**

- (1) **General.** Unless otherwise ordered by the court and subject to FRBP 6003(b), an order authorizing the sale of estate property other than in the ordinary course of business may be obtained upon motion of the trustee or debtor in possession in a chapter 7, 11, or 12 case after notice and a hearing pursuant to LBR 9013-1(a) or after notice of opportunity for hearing under LBR 9013-1(o)(1), *except* the following which must be set for hearing pursuant to LBR 9013-1(a):
- (A) A sale of all or substantially all of the debtor's assets in a case under chapter 11 or 12; or
 - (B) A sale of property that is either subject to overbid or concerning which the trustee or debtor in possession has been contacted by potential overbidders.
- (2) **Motion.**
- (A) A motion for an order authorizing the sale of estate property, other than in the ordinary course of business, must be supported by a declaration of the movant establishing the value of the property and that the terms and conditions of the proposed sale, including the price and all contingencies, are in the best interest of the estate.
 - (B) If the proposed sale is not subject to overbid, the declaration must include a certification that the movant has not been contacted by any potential overbidder and that, in the movant's business judgment, there are no viable alternative purchasers.
 - (C) A memorandum of points and authorities is not required but may be filed in support of the motion.
- (3) **Notice of Hearing.** If the motion is set for hearing pursuant to LBR 9013-1, the notice must state:
- (A) The date, time, and place of the hearing on the proposed sale;
 - (B) The name and address of the proposed buyer;
 - (C) A description of the property to be sold;
 - (D) The terms and conditions of the proposed sale, including the price and all contingencies;
 - (E) Whether the proposed sale is free and clear of liens, claims or interests, or subject to them, and a description of all such liens, claims, or interests;
 - (F) Whether the proposed sale is subject to higher and better bids;

- (G) The consideration to be received by the estate, including estimated commissions, fees, and other costs of sale;
 - (H) If authorization is sought to pay a commission, the identity of the auctioneer, broker, or sales agent and the amount or percentage of the proposed commission to be paid;
 - (I) A description of the estimated or possible tax consequences to the estate, if known, and how any tax liability generated by the sale of the property will be paid; and
 - (J) The date by which an objection must be filed and served.
- (4) Notice of Opportunity for Hearing. If authorization is sought pursuant to LBR 9013-1(o)(1), the notice must include the information required by subsection (c)(3)(B) through (I) of this rule and state:
- (A) That a written objection to the proposed sale, together with a request for hearing, must be filed and served pursuant to LBR 9013-1(o)(1) not later than ~~15~~ 14 days from the date of service of the notice, unless the notice period is shortened by order of the court; and
 - (B) That in the absence of an objection, an order may be entered authorizing the sale of the property without further notice or hearing.
- (d) **Notice of Intent to Use, Sell, or Lease Estate Property (Optional Procedure).**
- (1) Scope of Rule. A trustee or debtor in possession may sell, use or lease property of the estate in a chapter 7, 11, or 12 case, other than in the ordinary course of business, under 11 U.S.C. § 363(b)(1) upon notice, *except* the following which must be brought by motion and set for hearing pursuant to LBR 9013-1(a):
 - (A) A sale of all or substantially all of the debtor's assets in a case under chapter 11 or 12; or
 - (B) A sale of property that is either subject to overbid or concerning which the trustee or debtor in possession has been contacted by potential overbidders.
 - (2) Notice.
 - (A) The trustee or debtor in possession must give not less than ~~15~~ 14 days written notice by mail to creditors and interested parties who are entitled to notice, unless the court for cause shown shortens the time or otherwise modifies or limits notice pursuant to a motion under LBR 9075-1.
 - (B) The notice must comply with LBR 6004-1(c)(3)(B) through (I) and include a certification that the trustee or debtor in possession has not been

contacted by any potential overbidder and that, in the trustee's or debtor in possession's business judgment, there are no viable alternative purchasers.

- (C) The notice must state that any objection and request for hearing must be filed and served not more than ~~15~~ 14 days after service of the notice, unless the notice specifies a longer period or unless otherwise ordered by the court, and that in the absence of an objection the property may be sold without further notice.
 - (D) If an objection and request for hearing is not filed and served within such ~~15~~ 14-day period, the trustee or debtor in possession may take the proposed action on the date specified in the notice of intent. An order is not required nor will an order be entered under this subsection.
- (3) Objection and Request for Hearing. If a timely objection and request for hearing is filed and served, the trustee or debtor in possession must, within ~~20~~ 21 days from the date of service of such objection, obtain and give not less than ~~11~~ 14 days notice of the hearing to each objecting party and to the United States trustee.
- (e) **Sale of Publicly Traded Assets.** If the property consists of assets sold in public markets whose prices are published on national or regional exchanges (*e.g.*, securities, bonds, commodities, or precious metals), the trustee or debtor in possession may sell such assets in a market transaction after providing not less than ~~15~~ 14 days written notice by mail to such creditors and interested parties who are entitled to notice, unless the court for cause shown shortens the time or otherwise modifies or limits notice pursuant to a motion under LBR 9075-1.
- (1) The notice must identify the asset, the market through which the asset is to be sold, and the published price on the date of the notice.
 - (2) If a commission is to be paid to a sales agent, the notice must disclose the name and address of the sales agent and the amount of the commission to be paid on account of the sale.
 - (3) The notice must also state that any objection and request for hearing must be filed and served not more than ~~15~~ 14 days after service of the notice, unless the notice specifies a longer period or unless otherwise ordered by the court, and that in the absence of an objection the property may be sold without further notice.
 - (4) If an objection and request for hearing is not filed and served within such ~~15~~ 14-day period, the trustee or debtor in possession may proceed with the sale in accordance with the notice. An order is not required nor will an order be entered under this subsection.
 - (5) If a timely objection and request for hearing is filed and served, the trustee or debtor in possession must, within ~~20~~ 21 days from the date of service of such objection, obtain and give not less than ~~11~~ 14 days notice of the hearing to each objecting party and to the United States trustee.

- (6) The trustee or debtor in possession need not file an employment application on behalf of a sales agent registered with the Security Investors Protection Corporation, but the sales agent must execute a declaration of disinterestedness which must be filed by the trustee or debtor in possession with the notice.
- (f) **Publication of Notice of Sale of Estate Property.** Whenever the trustee or debtor in possession is required to give notice of a sale or of a motion to sell property of the estate pursuant to FRBP 6004 and 2002(c), an additional copy of the notice and court-approved form F 6004-2, Notice of Sale of Estate Property must be submitted to the clerk at the time of filing for purposes of publication by the clerk on the court's website.
- (g) **Report of Sale.** Unless otherwise ordered by the court, the report of sale required by FRBP 6004(f)(1) must be filed and served not later than ~~20~~ 21 days after the date of the sale of any property not in the ordinary course of business.
- (h) **Disbursement of Sale Proceeds.** Unless otherwise ordered by the court, all proceeds of a sale must be paid directly to any appointed trustee or the debtor in possession. A disbursement of proceeds must not be made without a specific order of the court authorizing the disbursement, except for payment to secured creditors, payment to a debtor of exempt proceeds, and payment for expenses of sale. Proceeds may be disbursed to pay auctioneer's fees and brokers' commissions without additional order of the court if payment is consistent with the terms of the order approving the sale or authorizing the employment of the auctioneer or broker.
- (i) **Chapter 13 Cases.** A motion to sell or refinance property in a chapter 13 case must be filed pursuant to LBR 3015-1(p).

LBR 6007-1. ABANDONMENT

- (a) **Notice of Intent to Abandon.** A trustee or debtor in possession who desires to abandon property of the estate may seek to do so by a notice of intent to abandon, without the necessity for filing a motion to abandon.
- (b) **Motion to Compel Abandonment.** An order compelling the case trustee or debtor in possession to abandon property of the estate may be obtained upon motion of a party in interest after notice of opportunity for hearing pursuant to LBR 9013-1(o)(1).
- (c) **Notice.**
- (1) **Content.** Notice of either an intent to abandon or motion to compel abandonment must (a) describe the property to be abandoned, including the address of the property, if applicable; (b) state the basis upon which the party seeking abandonment concludes that the property is burdensome to the estate or that it is of inconsequential value or benefit to the estate; and (c) state that any objection and request for hearing must be filed and served not more than ~~15~~ 14 days after service of the notice, unless the notice specifies a longer period or unless otherwise ordered by the court.
- (2) **Parties to Be Served.** The notice must be served on those listed in FRBP 6007(a).

(d) **Absence of Objection and Request for Hearing.**

- (1) If no timely objection and request for hearing is filed and served, the property is deemed abandoned without further order of the court.
- (2) If an entity desires an order of the court authorizing or directing, and confirming, the case trustee's or debtor in possession's abandonment of the property, that entity may lodge a proposed form of order with the court in accordance with the procedure set forth in LBR 9013-1(o)(3).

(e) **Objection and Request for Hearing.** If a timely objection and request for hearing is filed and served, the party requesting the abandonment must, within ~~20~~ 21 days from the date of service of such objection, obtain a hearing date and furnish not less than ~~11~~ 14 days notice of the hearing to each objecting party and to the United States trustee.

LBR 7003-1. ADVERSARY PROCEEDING SHEET

A complaint, filed electronically or non-electronically, must be accompanied by an Official Form B104, Adversary Proceeding Sheet, completed and signed by the attorney or party presenting the complaint. The form must contain the name, address, and telephone number of each party to the adversary proceeding, together with the name, address, and telephone number of each party's attorney, if known.

LBR 7004-1. ISSUANCE AND SERVICE OF SUMMONS AND NOTICE OF STATUS CONFERENCE

- (a) **Presentation for Issuance.** The attorney or party must prepare a Summons and Notice of Status Conference using court-mandated form F 7004-1 for execution by the clerk. The summons must be presented concurrently with the filing of a complaint or of an involuntary petition pursuant to 11 U.S.C. § 303.
- (b) **Manner of Service.** A summons must be served in the manner authorized in FRBP 7004. If a summons or any paper is served by mail, the mailing address must include the zip code. The notice required by FRBP 7026 and LBR 7026-1 must be served with the summons and complaint.
- (c) **Exception – Statute of Limitations.** If the statute of limitations applicable to any claim in a complaint will expire before the summons can be prepared and submitted, the complaint will be accepted by the clerk for filing without a summons. The summons must be presented for issuance within 2 days after the complaint is filed under this exception.

LBR 7004-2. LIMITATIONS ON SERVICE BY MARSHAL

- (a) **General.** Except as otherwise provided by order of the court or when required by the treaties or statutes of the United States, civil process on behalf of a non-governmental party must not be presented to the United States Marshal for service.
- (b) **Exception.** Upon request by the government, civil process on behalf of the United States government or an officer or agency thereof may be made by the United States Marshal.

LBR 7008-1. CORE/NON-CORE DESIGNATION

In all adversary proceedings, the statements required by FRBP 7008(a) and 7012(b) must be plainly stated in the first numbered paragraph of the paper.

LBR 7015-1. AMENDED AND SUPPLEMENTAL PLEADINGS

- (a) **Form.**
 - (1) An original and 1 copy of the proposed amended pleading must be lodged as a separate document and served with any notice of motion or stipulation to amend a pleading.

- (2) Every amended pleading filed as a matter of right or allowed by order of the court must be complete, including exhibits. The amended pleading must not incorporate by reference any part of the prior superseded pleading.
- (3) Unless otherwise ordered, a pleading will not be deemed amended absent compliance with this rule and FRBP 7015.

(b) Service of Allowed Amended Pleading.

- (1) Unless otherwise ordered, an amended pleading allowed by order of the court will be deemed served upon the parties who have previously appeared on the date the motion to amend is granted or the stipulation therefor is approved, provided the proposed amended pleading was lodged and served in accordance with subsection (a)(1). Otherwise, actual service and filing of the amended pleading is required.
- (2) A party who has not previously appeared must be served with an amended pleading as provided in LBR 2002-2 and 7004-1.

LBR 7016-1. STATUS CONFERENCE, PRETRIAL, AND TRIAL PROCEDURE

- (a) Status Conference.** In any adversary proceeding, the clerk will issue a summons and notice of the date and time of the status conference.
- (1) Who Must Appear. Each party appearing at any status conference must be represented by either the attorney (or party, if not represented by counsel) who is responsible for trying the case or the attorney who is responsible for preparing the case for trial.
 - (2) Contents of Joint Status Report. Unless otherwise ordered by the court, at least 14 days before the date set for each status conference the parties are required to file a joint status report discussing the following:
 - (A) State of discovery, including a description of completed discovery and detailed schedule of all further discovery then contemplated;
 - (B) A discovery cut-off date;
 - (C) A schedule of then contemplated law and motion matters;
 - (D) Prospects for settlement;
 - (E) A proposed date for the pretrial conference and/or the trial;
 - (F) Whether counsel have met and conferred in compliance with LBR 7026-1, and if so, the date of the conference;
 - (G) Any other issues affecting the status or management of the case; and
 - (H) Whether the parties are interested in alternative dispute resolution.

- (3) Unilateral Status Report. ~~If defendant has not responded to the complaint or fails to cooperate in the preparation of a joint status report, then plaintiff~~ If any party fails to cooperate in the preparation of a joint status report and a response has been filed to the complaint, each party must file a unilateral status report not less than ~~10~~ 7 days before the date set for each status conference, unless otherwise ordered by the court. The unilateral status report must contain a declaration setting forth the attempts made by plaintiff to contact or obtain the cooperation of the defendant.
- (4) Scheduling Order. Unless otherwise ordered by the court, within 7 days after the status conference the plaintiff must lodge, in accordance with LBR 9021-1(b), a proposed scheduling order setting forth the following:
- (A) Deadline to join other parties and to amend the pleadings;
 - (B) Deadline to complete discovery;
 - (C) Deadline to file any pretrial motions and/or a joint pretrial order;
 - (D) Any dates set for further status conferences, a final pretrial conference, and the trial;
 - (E) Any other appropriate matter; and
 - (F) Proof of service on all opposing counsel (or parties, if not represented by counsel).
- (5) Stipulation for Extension of Deadlines in Scheduling Order. A stipulation for extension of the deadlines set forth in a previously entered scheduling order must contain facts establishing cause for the requested extension and be submitted to the court in accordance with LBR 9021-1(b)(2) and LBR 9071-1.
- (b) **Joint Pretrial Order**.
- (1) When Required.
- (A) In any adversary proceeding or contested matter, unless otherwise ordered by the court, attorneys for the parties must prepare and lodge, in accordance with LBR 9021-1(b), a written joint pretrial order approved by counsel for all parties.
 - (B) Unless otherwise ordered by the court, the joint pretrial order must be lodged and served not less than 14 days before the date set for the trial or pretrial conference, if one is ordered.
 - (C) The preparation and filing of the pretrial order is the responsibility of the parties' counsel (or parties, if not represented by counsel). All parties must meet and confer at least 28 days before the date set for trial or pretrial conference, if one is ordered, for the purpose of preparing the pretrial order.

- (2) Contents of Pretrial Order. Unless the court orders otherwise, a joint pretrial order must include the following statements in the following order:
- (A) “The following facts are admitted and require no proof:” (Set forth a concise statement of each.)
 - (B) “The following issues of fact, and no others, remain to be litigated:” (Set forth a concise statement of each.)
 - (C) “The following issues of law, and no others, remain to be litigated:” (Set forth a concise statement of each.)
 - (D) “Attached is a list of exhibits intended to be offered at the trial by each party, other than exhibits to be used for impeachment only. The parties have exchanged copies of all exhibits.” (Attach a list of exhibits in the sequence to be offered, with a description of each, sufficient for identification, and as to each state whether or not there is objection to its admissibility in evidence and the nature thereof.) If deposition testimony is to be offered as part of the evidence, the offering party must comply with LBR 7030-1.
 - (E) “The parties have exchanged a list of witnesses to be called at trial.” The parties must exchange a list of names and addresses of witnesses, including expert witnesses, to be called at trial other than those contemplated to be used for impeachment or rebuttal. The lists of witnesses must be attached to the proposed joint pretrial order together with a concise summary of the subject of their proposed testimony. If an expert witness is to be called at trial, the parties must exchange short narrative statements of the qualifications of the expert and the testimony expected to be elicited at trial. If the expert to be called at trial has prepared a report, the report must be exchanged as well.
 - (F) “Other matters that might affect the trial such as anticipated motions in limine, motions to withdraw reference due to timely jury trial demand pursuant to LBR 9015-2, or other pretrial motions.”
 - (G) “All discovery is complete.”
 - (H) “The parties are ready for trial.”
 - (I) “The estimated length of trial is _____.”
 - (J) “The foregoing admissions have been made by the parties, and the parties have specified the foregoing issues of fact and law remaining to be litigated. Therefore, this order supersedes the pleadings and governs the course of trial of this cause, unless modified to prevent manifest injustice.”

(c) **Plaintiff's Duty.**

- (1) It is plaintiff's duty to prepare and sign a proposed joint pretrial order that is complete in all respects except for other parties' lists of exhibits and witnesses.
- (2) Unless otherwise ordered by the court, plaintiff must serve the proposed joint pretrial order in such manner so that it will actually be received by the office of counsel for all other parties not later than 4:00 p.m. on the ~~fifth~~^{7th} day prior to the last day for ~~filing~~^{lodging} the proposed pretrial order.

(d) **Duty of Parties Other Than Plaintiff.** Each other party must, within 3 days following receipt of plaintiff's proposed order, take the following action:

- (1) Agreement With Form of Proposed Order. If plaintiff's proposed order is satisfactory, attach that party's list of exhibits and witnesses to the order, indicate approval of the proposed order by signature, file it with the clerk in time to be received within the time prescribed in subsection (b)(1) of this rule, and serve all other parties with a completed copy of the order so filed; or
- (2) Disagreement With Form of Proposed Order. If plaintiff's proposed order is unsatisfactory:
 - (A) Immediately meet with or telephone plaintiff in a good faith effort to achieve a joint proposed order; and
 - (B) If such effort is unsuccessful, prepare a separate proposed order and file it, together with plaintiff's order and a declaration of that party setting forth the efforts made to comply with subsection (d)(2)(A) of this rule. The separate proposed order and declaration must be filed and served in such a manner that they will actually be received by the clerk and the plaintiff all within the time set forth in subsection (b)(1) of this rule.

(e) **Non-receipt of Proposed Joint Pretrial Order.**

- (1) Plaintiff. A plaintiff who has complied with subsection (c) of this rule and does not receive a timely response from the other parties, must file and serve a unilateral pretrial order at least 14 days before the trial or pretrial conference, if one is ordered. At the same time, plaintiff must file and serve a declaration asserting the failure of the other parties to respond.
- (2) Other Parties. Any party other than plaintiff who has not received plaintiff's proposed pretrial order within the time limits set forth in subsection (c) of this rule, must prepare, file, and serve at least 14 days prior to the trial or pretrial conference, if one is ordered, a declaration attesting to plaintiff's failure to prepare and serve a proposed pretrial order in a timely manner.

- (f) **Sanctions for Failure to Comply with Rule.** In addition to the sanctions authorized by F.R.Civ.P. 16(f), if a status conference statement or a joint proposed pretrial order is not filed within the times set forth in subsections (a) or (e), respectively, of this rule, the court may order one or more of the following:
- (1) A continuance of the trial date, if no prejudice is involved to the party who is not at fault;
 - (2) An award of monetary sanctions including attorneys' fees against the party at fault, payable to the party not at fault; and/or
 - (3) An award of non-monetary sanctions against the party at fault.

Monetary sanctions will be assessed against the party at fault and/or counsel, in the court's discretion. Non-monetary sanctions may include the entry of a judgment of dismissal or the entry of an order striking the answer and entering a default.

- (g) **Failure to Appear at Hearing or Prepare for Trial.** The failure of a party's counsel (or the party, if not represented by counsel) to appear before the court at the status conference or pretrial conference, or to complete the necessary preparations therefor, or to appear at or to be prepared for trial may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party either with respect to a specific issue or as to the entire proceeding, or the proceeding may be dismissed.

LBR 7026-1. DISCOVERY

- (a) **General.** Compliance with FRBP 7026 and this rule is required in all adversary proceedings.
- (1) **Notice.** The plaintiff must serve with the summons and complaint a notice that compliance with FRBP 7026 and this rule is required.
 - (2) **Proof of Service.** The plaintiff must file a proof of service of this notice together with the proof of service of the summons and complaint.
- (b) **Discovery Conference and Disclosures.**
- (1) **Conference of Parties.** Unless all defendants default, the parties must conduct the meeting and exchange the information required by FRBP 7026 within the time limits set forth therein.
 - (2) **Joint Status Report.** Within 7 days after such meeting, the parties must prepare a joint status report containing the information set forth in LBR 7016-1(a)(2). The joint status report will serve as the written report of the meeting required by FRBP 7026.

(c) **Failure to Make Disclosures or Cooperate in Discovery.**

- (1) **General.** Unless excused from complying with this rule by order of the court for good cause shown, a party must seek to resolve any dispute arising under FRBP 7026-7037 or FRBP 2004 in accordance with this rule.
- (2) **Meeting of Counsel.** Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within ~~10~~ 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.
- (3) **Moving Papers.** If counsel are unable to resolve the dispute, the party seeking discovery must file and serve a notice of motion together with a written stipulation by the parties.
 - (A) The stipulation must be contained in 1 document and must identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue.
 - (B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.
 - (C) In the absence of such stipulation or a declaration of counsel of noncooperation by the opposing party, the court will not consider the discovery motion.
- (4) **Cooperation of Counsel; Sanctions.** The failure of any counsel either to cooperate in this procedure, to attend the meeting of counsel, or to provide the moving party the information necessary to prepare the stipulation required by this rule within 7 days of the meeting of counsel will result in the imposition of sanctions, including the sanctions authorized by FRBP 7037 and LBR 9011-3.
- (5) **Contempt.** LBR 9020-1 governing contempt proceedings applies to a discovery motion to compel a non-party to comply with a deposition subpoena for testimony and/or documents under FRBP 7030 and 7034.

LBR 7026-2. DISCOVERY DOCUMENTS – RETENTION, FILING, AND COPIES

- (a) **Retention by Propounding Party.** The following discovery documents and proof of service thereof must not be filed with the clerk until there is a proceeding in which the document or proof of service is in issue:
- (1) Transcripts of depositions upon oral examination;
 - (2) Transcripts of depositions upon written questions;
 - (3) Interrogatories;
 - (4) Answers or objections to interrogatories;
 - (5) Requests for the production of documents or to inspect tangible things;
 - (6) Responses or objections to requests for the production of documents or to inspect tangible things;
 - (7) Requests for admission;
 - (8) Responses or objections to requests for admission;
 - (9) Notices of Deposition, unless filing is required in order to obtain issuance of a subpoena in another district; and
 - (10) Subpoena or Subpoena Duces Tecum.
- (b) **Period of Retention for Discovery Documents.** Discovery documents must be held by the attorney for the propounding party pending use pursuant to this rule for the period specified in LBR 9070-1(b) for the retention of exhibits, unless otherwise ordered by the court.
- (c) **Filing of Discovery Documents.**
- (1) When required in a proceeding, only that part of the document that is in issue must be filed with the court.
 - (2) When filed, discovery documents must be submitted with a notice of filing that identifies the date, time, and place of the hearing or trial in which it is to be offered.
 - (3) Original deposition transcripts are treated as trial exhibits and must be delivered to the judge for use at the hearing or trial. The original deposition transcript and a copy must be lodged with the clerk pursuant to LBR 7030-1(b).
- (d) **Copies of Discovery Documents.**
- (1) Unless an applicable protective order otherwise provides, any entity may obtain a copy of any discovery document described in subsection (a) of this rule by making a written request therefor to the clerk and paying duplication costs.
 - (2) The clerk will give notice of the request to all parties in the case or proceeding, and the party holding the original of the requested discovery document must lodge the original or an authenticated copy with the clerk within ~~10~~ 14 days after service of the clerk's notice.

- (3) Promptly after duplication, the clerk will return the original to the party who provided it.

LBR 7026-3. INTERROGATORIES AND REQUESTS FOR ADMISSION

(a) Form.

- (1) Interrogatories and requests for admission must comply with the form requirements of LBR 9004-1.
- (2) Interrogatories and requests for admissions must be numbered sequentially without repeating the numbers used on any prior set of interrogatories or requests for admission propounded by that party.

- (b) Number of Interrogatories Permitted.** A party must not, without leave of the court and for good cause shown, serve more than 25 interrogatories on any other party. Each subdivision of an interrogatory is considered a separate interrogatory. A motion for leave to serve additional interrogatories may be made pursuant to LBR 9013-1.

- (c) Answers and Objections.** The party answering or objecting to interrogatories or requests for admission must quote each interrogatory or request in full immediately preceding the statement of any answer or objection thereto.

- (d) Retention By Propounding Party.** The original of the interrogatories or requests for admission must be held by the attorney propounding the interrogatories or requests pursuant to LBR 7026-2 pending use or further order of the court.

LBR 7030-1. DEPOSITIONS

(a) Custody of Original Transcript.

- (1) The original transcript of a deposition must be sent to the attorney noticing the deposition after signing and correction or waiver of the same unless otherwise stipulated to on the record at the deposition.
- (2) It is the duty of the attorney noticing the deposition to obtain from the reporter the original transcript thereof in a sealed envelope and to safely retain the same under conditions suitable to protect it from tampering, loss, or destruction.
- (3) Upon request of any party intending to offer deposition evidence at a contested hearing or trial, a copy of the transcript must be sent to that party for marking in compliance with subsection (b) of this rule.

- (b) Use of Deposition Evidence in Contested Hearing or Trial.** Unless otherwise ordered by the court, each party intending to offer any evidence by way of deposition testimony pursuant to F.R.Civ.P. 32 and F.R.Evid. 803 or 804 must:

- (1) Lodge the original deposition transcript and a copy pursuant to this rule with the clerk at least ~~10~~ 7 days before the hearing or trial at which it is to be offered;

- (2) Identify on the copy of the transcript the testimony the party intends to offer by bracketing in the margins the questions and answers that the party intends to offer at trial. The opposing party must likewise countermark any testimony that it plans to offer. The parties must agree between themselves on a separate color to be used by each party which must be used consistently by that party for all depositions marked in the case;
 - (3) Mark objections to the proffered evidence of the other party in the margins of the deposition by briefly stating the ground for the objection; and
 - (4) Serve and file notice of the portions of the deposition marked or countermarked by stating the pages and lines so marked, objections made, and the grounds indicated therefor. The notice must be served and filed within ~~5~~ 7 days after the party has marked, countermarked, or objects to the deposition evidence.
- (c) **Deposition Summary.** In appropriate cases and when ordered by the court, the parties may jointly prepare a deposition summary to be used in lieu of question and answer reading of a deposition at trial.

LBR 7041-1. DISMISSAL OF ADVERSARY PROCEEDING

- (a) **Dismissal for Want of Prosecution.** A proceeding that has been pending for an unreasonable period of time without any action having been taken therein may be dismissed for want of prosecution upon notice and opportunity to request a hearing.
- (b) **Dismissal for Failure to Appear.** If a party fails to appear at the noticed hearing of a motion or trial of the proceeding, the court may make such orders in regard to the failure as are just, including dismissal of the matter for want of prosecution. Unless the court provides otherwise, any dismissal pursuant to this rule is without prejudice.
- (c) **Reinstatement – Sanctions.** If any proceeding dismissed pursuant to this rule is reinstated, the court may impose such sanctions as it deems just and reasonable.
- (d) **Notice of Dismissal.** The clerk will provide to all parties to the proceeding notice of entry of any order dismissing a proceeding under this rule.

LBR 7052-1. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (a) **Preparation and Lodging.** In all cases where written findings of fact and conclusions of law are required, the prevailing party must within 7 days of the date of the hearing at which oral findings and conclusions were rendered, lodge electronically via LOU proposed findings of fact and conclusions of law, unless otherwise ordered by the court.
- (b) **Findings of Fact.** The proposed findings of fact must:
 - (1) Be in separately numbered paragraphs;

- (2) Be in chronological order; and
 - (3) Not make reference to allegations contained in the pleadings.
- (c) **Conclusions of Law.** The proposed conclusions of law must follow the findings of fact, and:
- (1) Must be in separately numbered paragraphs; and
 - (2) May include brief citations of appropriate authority.

LBR 7054-1. TAXATION OF COSTS AND AWARD OF ATTORNEYS' FEES

- (a) **Who May Be Awarded Costs.** When costs are allowed by the FRBP or other applicable law, the court may award costs to the prevailing party. No costs will be allowed unless a party qualifies as, or is determined by the court to be, the prevailing party under this rule. Counsel are advised to review 28 U.S.C. § 1927 regarding counsel's liability for excessive costs.
- (b) **Prevailing Party.** For purposes of this rule, the prevailing party is defined as follows:
- (1) Recovery on Complaint. The plaintiff is the prevailing party when it recovers on the entire complaint.
 - (2) Dismissal or Judgment in Favor of Defendant. The defendant is the prevailing party when the proceeding is terminated by court-ordered dismissal or judgment in favor of defendant on the entire complaint.
 - (3) Partial Recovery. Upon request of one or more of the parties, the court will determine the prevailing party when there is a partial recovery or a recovery by more than one party.
 - (4) Voluntary Dismissal. Upon request of one or more of the parties, the court will determine the prevailing party when the proceeding is voluntarily dismissed or otherwise voluntarily terminated.
 - (5) Offer of Judgment. If a party defending against a claim files under seal a written offer of judgment before trial and the judgment finally obtained by the offeree is not more favorable than the offer, the party offering the judgment is the prevailing party.
- (c) **Bill of Costs.** The prevailing party who is awarded costs must file and serve a bill of costs not later than 30 days after entry of judgment. Each item claimed must be set forth separately in the bill of costs. The prevailing party, or the party's attorney or agent having knowledge of the facts must file a declaration with the bill of costs certifying that:

- (1) The items claimed as costs are correct;
 - (2) The costs were necessarily incurred in the case;
 - (3) The services for which fees have been charged were actually and necessarily performed; and
 - (4) The costs were paid or the obligation for payment was incurred.
- (d) **Items Taxable as Costs.** A list of the items taxable as costs is contained in the Court Manual available from the clerk and on the court's website.
- (e) **Objection to Bill of Costs.** Not later than ~~5~~ 7 days after service of a copy of a bill of costs, a party dissatisfied with the costs claimed may file and serve an objection to taxation of the costs sought. The grounds for objection must be stated specifically. The court may resolve the matter without a hearing or set the matter for hearing.
- (f) **Entry of Costs.** If a timely objection to a bill of costs is not filed or, in the event of a timely objection, as soon as practicable after an order determining the objection becomes final, the clerk will insert the amount of costs awarded to the prevailing party into the blank left in the judgment for that purpose and enter a similar notation on the docket sheet.
- (g) **Motion for Attorneys' Fees.**
- (1) If not previously determined at trial or other hearing, a party seeking an award of attorneys' fees where such fees may be awarded must file and serve a motion not later than 30 days after the entry of judgment or other final order, unless otherwise ordered by the court.
 - (2) The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion for attorneys' fees under this rule.
- (h) **Execution.** Upon request, the clerk will issue a writ of execution to recover costs and attorneys' fees included in the judgment:
- (1) Upon presentation of a certified copy of the final judgment in the bankruptcy court or in the district court; or
 - (2) Upon presentation of a mandate of the district court, bankruptcy appellate panel, or court of appeals to recover costs taxed by the appellate court.

LBR 7055-1. DEFAULT

- (a) **Entry of Default.** A request for the clerk to enter default must be supported by a declaration establishing the elements required by F.R.Civ.P. 55(a), as incorporated into FRBP 7055, and a proof of service on the defaulting party.
- (b) **Motion for Default Judgment.**
- (1) **Form of Motion.** A motion for default judgment must state:
- (A) The identity of the party against whom default was entered and the date of entry of default;
- (B) Whether the defaulting party is an infant or incompetent person and, if so, whether that person is represented by a general guardian, committee, conservator, or other representative;
- (C) Whether the individual defendant in default is currently on active duty in the armed forces of the United States, based upon an appropriate declaration in compliance with the Servicemembers Civil Relief Act (Pub. L. 108-189) (50 U.S. Code App. §§ 501-594). When the individual defendant is the debtor, the party seeking the default may rely upon the debtor's sworn statements contained in a statement of financial affairs, by following the appropriate procedure for requesting judicial notice of that document pursuant to F.R.Evid. 201; and
- (D) That notice of the motion has been served on the defaulting party, if required by F.R.Civ.P. 55(b)(2).
- (2) **Evidence of Amount of Damages.** Unless otherwise ordered, if the amount claimed in a motion for judgment by default is unliquidated, the movant must submit evidence of the amount of damages by declarations in lieu of live testimony. Notice must be given to the defaulting party of the amount requested. Any opposition to the amount of damages by the party against whom the judgment is sought must be in writing and supported by competent evidence.
- (3) **Other Relief.** Other proceedings necessary or appropriate to the entry of a judgment by default may be taken as provided in F.R.Civ.P. 55(b)(2).
- (4) **Attorneys' Fees.**
- (A) When a promissory note, contract, or applicable statute provides a basis for the recovery of attorneys' fees, a reasonable attorneys' fee may be allowed in a default judgment. Subject to subsection (b)(4)(B), the reasonableness of the attorneys' fee will be calculated based upon the amount of the judgment, exclusive of costs, according to the following schedule:

<u>Amount of Judgment</u>	<u>Attorneys' Fees Award</u>
\$0.01 - \$1,000	30% with a minimum of \$250
\$1,000.01 - \$10,000	\$300 plus 10% of the amount over \$1,000
\$10,000.01- \$50,000	\$1,200 plus 6% of the amount over \$10,000
\$50,000.01- \$100,000	\$3,600 plus 4% of the amount over \$50,000
Over \$100,000	\$5,600 plus 2% of the amount over \$100,000

- (B) An attorney seeking fees in excess of the schedule may request in the motion for default judgment to have a reasonable attorneys' fee fixed by the court. The court will hear the request and render judgment for such fee as the court may deem reasonable.

LBR 7056-1. SUMMARY JUDGMENT

- (a) **General.** The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion for summary judgment, except as provided by this rule.

(b) **Motion and Supporting Documents.**

- (1) **Motion.** A notice of motion and motion for summary judgment or partial summary adjudication pursuant to FRBP 7056 must be served and filed not later than 36 days before the date of the hearing on the motion.

- (2) **Statement of Uncontroverted Facts and Conclusions of Law and Proposed Summary Judgment.**

- (A) The movant must serve, file, and lodge with the motion for summary judgment or partial summary adjudication a proposed statement of uncontroverted facts and conclusions of law and a separate proposed summary judgment.

- (B) Unless otherwise ordered by the court, the proposed statement of uncontroverted facts and conclusions of law must be lodged electronically via LOU. The statement must identify each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to establish each such fact.

- (3) **Evidence.** The movant is responsible for filing with the court all evidentiary documents cited in the moving papers in accordance with LBR 9013-1(i).

(c) **Response and Supporting Documents.**

- (1) **Response.** Any party who opposes the motion must serve and file a response not later than 21 days before the date of the hearing on the motion.

- (2) **Statement of Genuine Issues.**

- (A) The respondent must serve, file, and lodge a separate concise statement of genuine issues with the response.
 - (B) Unless otherwise ordered by the court, the respondent's statement of genuine issues must be lodged electronically via LOU. The respondent's statement must identify each material fact that is disputed and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to establish the dispute and the existence of a genuine issue precluding summary judgment or adjudication.
- (3) Evidence. The respondent is responsible for filing with the court all necessary evidentiary documents cited in the responding papers in accordance with LBR 9013-1(i).
- (4) Need for Discovery. If a need for discovery is asserted as a basis for denial of the motion, the respondent must identify the specific facts or issues on which discovery is necessary and justify the request for additional time to pursue such discovery.
- (d) **Reply**. Movant must serve and file any reply not later than ~~10~~ 14 days before the hearing on the motion.
- (e) **Stipulated Facts**. The parties may file a stipulation setting forth a statement of stipulated undisputed facts. The parties so stipulating may state that their stipulations are entered into solely for purposes of the motion for summary judgment and are not intended to be binding otherwise.
- (f) **Facts Deemed Admitted**. In determining any motion for summary judgment or partial summary adjudication, the court may assume that the material facts as claimed and adequately supported by the movant are admitted to exist without controversy, except to the extent that such facts are:
- (1) Included in the "statement of genuine issues," and
 - (2) Adequately controverted by declaration or other evidence filed in opposition to the motion.

LBR 7064-1. SEIZURE OF PERSONS AND PROPERTY

- (a) **Issuance of Writ**. A writ or other process issued for the seizure of persons or property pursuant to F.R.Civ.P. 64, 69, or 70 must be issued, attested, signed, and sealed as required for writs issued out of this court.
- (b) **Writ or Other Process of Seizure**. A writ or other process for seizure in a civil action must be directed to, executed, and returned by the United States Marshal, a state or local law enforcement officer authorized by state law, or a private person specially appointed by the court for that purpose pursuant to an application and order.

(c) **Process Requiring Entry Upon Premises.**

- (1) An order of court requiring entry upon private premises without notice must be executed by the United States Marshal, a state or local law enforcement officer authorized by state law, or a private person specially appointed by the court for that purpose pursuant to an application and order.
- (2) If a writ or other process is to be executed by a private person, the private person must be accompanied by a United States Marshal or a state or local law enforcement officer present at the premises during the execution of the order.

(d) **Eviction.** Any eviction to be made pursuant to a writ of possession issued by the court pursuant to 11 U.S.C. § 365(d)(4) must be effected by a state or local law enforcement officer authorized by state law to execute such writs issued under state law, unless otherwise ordered by the court.

LBR 7065-1. INJUNCTIONS

(a) **Adversary Proceeding Required.** A temporary restraining order or preliminary injunction may be sought as a provisional remedy only in a pending adversary proceeding, not in the bankruptcy case itself. An adversary complaint must be filed either prior to, or contemporaneously with, a request for issuance of a temporary restraining order (“TRO”) or preliminary injunction.

(b) **Temporary Restraining Orders and Preliminary Injunctions.**

- (1) When a TRO is not requested, a preliminary injunction must be sought by noticed motion and not by order to show cause.
- (2) When a TRO is requested, a preliminary injunction must be sought by order to show cause.
- (3) If the TRO is granted without notice, the hearing on the order to show cause must be set within ~~10~~ 14 days after the entry of the TRO unless otherwise agreed by the parties.
- (4) If the TRO is denied or granted after reasonable notice, the court may set the hearing on the order to show cause re preliminary injunction without regard to the notice of motion requirements set forth in LBR 9013-1(d)(2).

(c) **Approval of Bonds, Undertakings, and Stipulations Regarding Security.** A bond, undertaking, or stipulation regarding security given in conjunction with the issuance of a TRO or preliminary injunction must satisfy the requirements of FRBP 7065(c) and LBR 2010-1.

LBR 7067-1. REGISTRY FUND**(a) Deposit of Registry Funds.**

- (1) General. Funds must not be sent to the court or the clerk for deposit into the court's registry without a court order.
- (2) Form of Order. A party seeking authorization to deposit funds into the court's registry must prepare an order that meets the requirements of LBR 9004-1 and states (A) the exact amount to be deposited; (B) that the funds are to be deposited into an interest bearing account; and (C) that the funds will remain on deposit until further order of the court. The order must also contain the following provision:

“IT IS ORDERED that the clerk is directed to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, whenever such income becomes available for deduction in the investment so held and without further order of the court.”

- (3) Tender of Funds. The funds must be submitted to the clerk by check or money order made payable to “U. S. Bankruptcy Court” in the exact amount specified in the court order.

(b) Notice to Clerk.

- (1) Whenever the court orders that money deposited into court must be deposited by the clerk in an interest bearing account, the party seeking the order must forthwith personally serve a copy of such order upon the clerk or chief deputy clerk along with the deposit.
- (2) The failure of the party seeking an order of deposit to an interest bearing account to serve the clerk or chief deputy with a copy of the order releases the clerk from liability for loss of interest upon the money subject to the order of deposit.

- (c) **Authorized Depositories.** Unless otherwise ordered by the court, the clerk must deposit money pursuant to an order of deposit in any institution that the United States trustee has authorized for deposit of funds administered by debtors in possession or appointed trustees, subject to the same terms and conditions as for such funds. The clerk may also invest such money in United States Treasury bills.

- (d) **Timing of Deposit.** The clerk must deposit the money pursuant to an order of deposit as soon as practicable following service of a copy of the order by the party authorized to deposit funds.

- (e) **Fees Charged on Registry Funds.** All funds deposited on or after December 1, 1990 and invested as registry funds will be assessed a charge of 10% of the income earned. Fees may be deducted periodically without further order and will be subject to any subsequent exceptions or adjustments by directive of the Administrative Office of the United States Courts.

(f) Disbursements of Registry Funds.

- (1) General. The clerk will disburse funds on deposit in the registry of the court only pursuant to a court order.
- (2) Form of Order. The disbursement order must contain a provision relieving the clerk from liability for loss of interest, if any, for early withdrawal of the funds. The order must state the name and taxpayer identification number for each party who is to receive funds and the amount or percentage of the principal each is to receive. The order must also state the percentage of the interest each party is to receive. Funds will be disbursed only after the time for appeal of any related judgment or order has expired, or upon approval by the court of a written stipulation by all parties.

LBR 7069-1. ENFORCEMENT OF JUDGMENT AND PROVISIONAL REMEDIES

- (a) Use of United States Marshal is Discouraged. The court encourages the use of state remedies and officers wherever appropriate to enforce judgments or obtain available remedies. The United States Marshals Service is available to enforce federal judgments as necessary.
- (b) Forms.
 - (1) Unless the court has adopted its own form, the applicable form approved by the Judicial Council of California for use in California courts must be used in this court whenever a provisional remedy is sought or a judgment is enforced in accordance with state law as provided in FRBP 7064 and 7069.
 - (2) The caption must be revised to specify “United States Bankruptcy Court for the Central District of California,” rather than the California courts, and the form must be modified, as necessary, to meet the requirements of LBR 9004-1 and LBR 9009-1.

LBR 7069-2. DISCOVERY IN AID OF ENFORCEMENT OF JUDGMENT

- (a) Discovery Permitted. With respect to a judgment of the bankruptcy court and as allowed by FRBP 7069, except to the extent that a federal statute applies, a judgment creditor may obtain discovery from any person to aid in enforcing a judgment in the manner provided by F.R.Civ.P. 26-37 or in the manner provided by state law.
- (b) Rule 2004 Examination Not Permitted. A judgment creditor may not use FRBP 2004 to collect information to use to enforce a judgment.

LBR 8000-1. RULES APPLICABLE TO BANKRUPTCY APPEALS

- (a) **Appeals to District Court.** A bankruptcy appeal pending before the district court is governed by Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.
- (b) **Appeals to Bankruptcy Appellate Panel.** A bankruptcy appeal pending before the bankruptcy appellate panel is governed by the Rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (c) **Direct Appeals to Ninth Circuit.** In an appeal arising out of a bankruptcy case filed on or after October 17, 2005, a certification of a judgment, order, or decree of the court to the Ninth Circuit, as permitted by 28 U.S.C. § 158(d)(2), must be made in accordance with FRBP 8001(f) and 8003, as well as any applicable interim rules approved by the Committee on Rules of Practice and Procedure of the United States Judicial Conference and the Judicial Conference of the United States.

LBR 8001-1. NOTICE OF APPEAL

A notice of appeal must be filed in accordance with FRBP 8001(a) and Rule 2.2 of Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.

LBR 8001-3. STATEMENT OF ELECTION

A statement of election to have an appeal heard by the district court instead of the bankruptcy appellate panel must be filed in accordance with FRBP 8001(e) and Rules 2.1.1 through 2.1.2.2 of Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.

LBR 8003-1. LEAVE TO APPEAL FROM INTERLOCUTORY ORDERS

- (a) **Applicability.**
 - (1) This rule is applicable solely to appeals referred to the bankruptcy appellate panel.
 - (2) Leave to appeal from an interlocutory order to the district court is governed by Rule 3 of Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.
- (b) **Motion for Leave to Appeal.** Leave to appeal under 28 U.S.C. § 158(a) must be sought by filing a motion for leave with the clerk within the time provided by FRBP 8002 for filing a notice of appeal, with proof of service by the applicant in accordance with FRBP 8008(b).
- (c) **Content of Motion.** A motion for leave to appeal must include all elements required by FRBP 8003(a).
- (d) **Answer.** Within ~~10~~ 14 days after service of the motion, an adverse party may file with the clerk an answer in opposition.

(e) Disposition.

- (1) Unless a party to the appeal has filed with the clerk of the bankruptcy appellate panel a written objection to the disposition of the appeal by the bankruptcy appellate panel, the clerk will transmit the motion for leave to appeal and any answer thereto to the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired.
- (2) If an objection is duly filed after the motion has been referred to the bankruptcy appellate panel but before it has been determined, then the motion will be transferred to the district court for decision.
- (3) The motion and answer will be considered without oral argument, unless otherwise ordered.

(f) Designation and Transmission of Record.

- (1) If leave to appeal is granted, the clerk will notify counsel for appellant within ~~5~~ 7 days. The record will be designated and transmitted and the appeal will be docketed in accordance with FRBP 8006 and 8007.
- (2) The time fixed by FRBP 8006 and 8007 for designating and transmitting the record and docketing the appeal will run from the date of the notice by the clerk of entry of the order granting leave to appeal.

LBR 8004-1. SERVICE OF NOTICE OF APPEAL

- (a) Service on Parties to Appeal.** Within 3 days after the filing of a notice of appeal, the clerk will serve upon all parties to the appeal a copy of the notice of appeal, Notice of Referral of Appeal, Transcript Order Form, Notice of Transcript, and a copy of the below-referenced applicable order:
- (1) Amended Order Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit (referencing appeals originating in bankruptcy cases filed on or before October 22, 1994).
 - (2) Order Continuing Bankruptcy Appellate Panels of the Ninth Circuit (referencing appeals originating in bankruptcy cases filed after October 22, 1994).
- (b) Transmission to Appellate Court.** A copy of the notice of appeal will also be transmitted to the clerk of the bankruptcy appellate panel or clerk of the district court.

LBR 8009-1. BRIEFS IN APPEALS TO DISTRICT COURT

Briefs in an appeal pending before the district court are governed by Rule 5 of Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.

LBR 8011-4. EMERGENCY MOTIONS IN APPEALS TO DISTRICT COURT

An emergency motion in an appeal pending in the district court must be made in accordance with Rule 6.3 of Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.

LBR 8014-1. COSTS ON APPEAL TO DISTRICT COURT

Costs on appeal to the district court are governed by Rule 9 of Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings.

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LBR 9001-1. DEFINITIONS

- (a) **Definition of Terms.** As used in these rules, the following words and phrases are defined as follows:
- (1) **“Appellate Court”** means the bankruptcy appellate panel or the district court exercising its appellate jurisdiction pursuant to 28 U.S.C. § 158.
 - (2) **“Application”** means a request for judicial action that must be sought by application rather than motion under the FRBP.
 - (3) **“Attorney” or “Counsel”** includes attorney, proctor, advocate, solicitor, counsel, or counselor.
 - (4) **“Bankruptcy Appellate Panel”** means the United States Bankruptcy Appellate Panel of the Ninth Circuit.
 - (5) **“Bankruptcy Code” or “Code”** means title 11 of the United States Code.
 - (6) **“Brief”** includes briefs, memoranda, points and authorities, and other written argument or compilations of authorities.
 - (7) **“Case”** means a bankruptcy case commenced by the filing of a petition pursuant to 11 U.S.C. §§ 301, 302, 303, or 1504.
 - (8) **“Clerk”** means the clerk of the United States Bankruptcy Court for the Central District of California and deputy clerks. Other clerks may be specified in the text.
 - (9) **“CM/ECF”** means the court’s Case Management/Electronic Case Files System.
 - (10) **“CM/ECF Procedures”** means the Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers Using the Case Management/Electronic Case Files (CM/ECF) System as authorized and approved by General Order 06-03 on November 7, 2006. The instructions for registration and procedures for use of CM/ECF are posted on the court’s website at the CM/ECF home page and contained in the Court Manual available from the clerk and on the court’s website.
 - (11) **“CM/ECF User”** means a person or entity registered to use the court’s Case Management/Electronic Case Files System.
 - (12) **“Court”** means the United States Bankruptcy Court of the Central District of California or the district court when exercising its original bankruptcy jurisdiction pursuant to 11 U.S.C. § 1334, including the judge to whom a case or proceeding is assigned.
 - (13) **“Court Manual”** means the procedural manual maintained and updated periodically by the clerk that includes: General Court Information; Filing Information and Procedures; CM/ECF Procedures; LOU Procedures; Other Court

Technology; and Clerk’s Forms. The Court Manual is available from the clerk and on the court’s website.

- (14) “**Courtroom Deputy**” means a deputy clerk assigned to the courtroom of a judge of the court.
- (15) “**Court’s Website**” means www.cacb.uscourts.gov.
- (16) “**Declaration**” means any declaration under penalty of perjury executed in conformance with 28 U.S.C. § 1746 and any properly executed affidavit.
- (17) “**Defendant**” means a party against whom a claim for relief is made by complaint, counterclaim, or cross-claim.
- (18) “**District Court**” means the United States District Court for the Central District of California.
- (19) “**District Court Rules**” means the Local Civil Rules of the United States District Court for the Central District of California; Chapter IV, Local Rules of the District Court Governing Bankruptcy Appeals, Cases and Proceedings; and such other rules and general orders adopted by the district court concerning cases or proceedings filed or pending in the bankruptcy court.
- (20) “**F.R.App.P.**” means the Federal Rules of Appellate Procedure.
- (21) “**FRBP**” means the Federal Rules of Bankruptcy Procedure.
- (22) “**F.R.Civ.P.**” means the Federal Rules of Civil Procedure.
- (23) “**F.R.Evid.**” means the Federal Rules of Evidence.
- (24) “**File**” means the delivery, including electronically via CM/ECF, to and acceptance by the clerk, courtroom deputy, the court, or other person authorized by the court of a paper that will be noted in the docket.
- (25) “**Judge**” means a bankruptcy judge, district court judge, or other judicial officer in a case or proceeding assigned to the court.
- (26) “**Lodge**” means to deliver, including electronically via LOU, to the clerk, courtroom deputy, the court, or other person authorized by the court a paper that is tendered to the court but is not approved for filing, such as a proposed form of order.
- (27) “**LOU**” means the court’s Lodged Order Upload program.
- (28) “**LOU Procedures**” means the procedures for LOU posted on the court’s website at the CM/ECF home page and contained in the Court Manual available from the clerk and on the court’s website.

- (29) “**Motion**” includes all motions, applications, objections to claims that are not adversary proceedings, or other requests made for judicial action except by complaint, counterclaim, or cross-claim.
- (30) “**Movant**” means an entity requesting an order other than by way of complaint, counterclaim, or cross-claim.
- (31) “**NEF**” means the Notice of Electronic Filing, and hyperlink to the document filed, automatically generated when a paper is electronically or non-electronically added to the docket or a docket event is entered. As set forth in the CM/ECF Procedures, an NEF and hyperlink to the document or docket event is transmitted electronically to parties who have a CM/ECF login and password and who are either a party in a case or adversary proceeding or have otherwise participated in the case or adversary proceeding.
- (32) “**Ninth Circuit**” means the United States Court of Appeals for the Ninth Circuit.
- (33) “**Notice of Entry**” means a document completed by the clerk that provides notice to appropriate persons or entities that an order or judgment has been entered.
- (34) “**Paper**” includes all pleadings, motions, affidavits, declarations, briefs, points and authorities, and all other papers and documents presented for filing or lodging, excluding exhibits submitted during a hearing or trial.
- (35) “**Plaintiff**” means a party claiming affirmative relief by complaint, counterclaim, or cross-claim.
- (36) “**Proceeding**” includes motions, adversary proceedings, contested matters, and other matters presented to the court. It does not include a “case” as defined above.
- (37) “**Proof of Service**” means a document certifying that a person or entity who filed or lodged a paper with the court served other appropriate persons or entities with a copy of the paper filed or lodged.
- (38) “**Respondent**” means an entity responding to a request for an order other than by way of complaint, counterclaim, or cross-complaint.
- (39) “**United States attorney**” means the United States Attorney for the Central District of California, and any assistant United States attorney, employee, or designee of the United States attorney.
- (40) “**United States trustee**” means the United States Trustee for Region 16, and any assistant United States trustee, employee, or designee of the United States trustee.
- (41) “**United States Trustee Notices and Guides**” means the United States Trustee Chapter 11 Notices and Guides and the Notice of Requirements for Debtors In Possession in Chapter 11 Cases.

- (b) **Terms Not Otherwise Defined.** A term not defined in this rule will have the meaning provided in the Bankruptcy Code or the FRBP.

LBR 9004-1. FORM OF PAPERS FILED OR LODGED WITH COURT

(a) **General.**

- (1) Unless otherwise expressly provided by these rules, a paper filed or lodged with the court and any exhibit thereto must comply with the form and format requirements contained in the Court Manual available from the clerk and on the court's website.
- (2) This rule does not prevent the use of Official Forms or court-approved forms in accordance with LBR 9009-1.

(b) **Signature of ~~Person-Counsel.~~**

- (1) General. The name of the person signing a paper must be printed clearly below the signature line.
- (2) Facsimile or Electronically Produced Signature. Unless otherwise provided in a case, the clerk may accept papers for filing that bear a facsimile or electronically produced signature as the equivalent of an original signature, provided the filing party and clerk comply strictly with the court's electronic filing procedures described in LBR 5005-4 for the safeguarding of paper documents with original signatures.

LBR 9009-1. FORMS

- (a) **Official Forms.** Official Forms prescribed by the Judicial Conference of the United States may be used in any case or proceeding filed in this court.

(b) **Court-approved Forms.**

- (1) In addition to the Official Forms prescribed by the Judicial Conference of the United States, the court provides additional court-approved forms, copies of which are available from the clerk and on the court's website.
- (2) Unless specifically designated as a mandatory form or unless otherwise specifically ordered, a court-approved form provided in these rules is optional and is provided for the convenience of the parties.

(c) **Court-mandated Forms.**

- (1) A court-mandated form is a court-approved form designated as "mandatory." A court-mandated form must be filed with the exact language provided in the form. If the court-mandated form is an order or judgment, the form order or judgment must be lodged with the exact language provided in the form, except that it may include additional language that has been approved by the court.

- (2) No modification of the original text of a court-mandated form is permitted. Any proposed modification must be added as an attachment so that the suggested modification of the standard language of the court-mandated form is obvious.
- (d) **Certificate of Substantial Compliance.** If a modified version of an Official Form or a court-approved form is used, then such paper must include a certificate that the form contains the same substance as the Official Form or court-approved form, as applicable.

LBR 9011-2. PERSONS APPEARING WITHOUT COUNSEL

- (a) **Corporation, Partnership, Unincorporated Association, or Trust.** A corporation, a partnership including a limited liability partnership, a limited liability company, or any other unincorporated association, or a trust may not file a petition or otherwise appear without counsel in any case or proceeding, except that it may file a proof of claim, file or appear in support of an application for professional compensation, or file a reaffirmation agreement, if signed by an authorized representative of the entity.
- (b) **Individuals.** Any individual representing himself or herself without an attorney must appear personally for such purpose.
- (c) **Minors or Incompetents.** A non-attorney guardian for a minor or an incompetent person must be represented by counsel. Local Civil Rule 83-5 of the district court is incorporated herein by reference.
- (d) **Compliance with Rules.** Any person appearing without counsel must comply with the F.R.Civ.P., F.R.Evid., F.R.App.P., FRBP, and these rules. The failure to comply may be grounds for dismissal, conversion, appointment of a trustee or an examiner, judgment by default, or other appropriate sanctions.

LBR 9011-3. SANCTIONS

- (a) **Violation of Rules.** The violation of, or failure to conform to, the FRBP or these rules may subject the offending party or counsel to penalties, including monetary sanctions, the imposition of costs and attorneys' fees payable to opposing counsel, and/or dismissal of the case or proceeding.
- (b) **Failure to Appear or Prepare.** Unless otherwise ordered by the court, the failure of counsel for any party to take any of the following steps may be deemed an abandonment or failure to prosecute or defend diligently by the defaulting party:
- (1) Complete the necessary preparation for pretrial;
 - (2) Appear at pretrial or status conference;
 - (3) Be prepared for trial on the date set; or
 - (4) Appear at any hearing where service of notice of the hearing has been given or waived.

- (c) **Penalties for an Unnecessary or Unwarranted Motion or Opposition.** Pursuant to FRBP 9011, the presentation to the court of an unnecessary motion and the unwarranted opposition to a motion, which unduly delays the course of an action or proceeding, or failure to comply fully with these rules, subjects the offender and attorney at the discretion of the court to appropriate discipline, including the imposition of costs and the award of attorneys' fees to opposing counsel, payment of 1 day's jury fees of the panel, if one has been called for the trial, and such other sanctions, including denial of the motion or dismissal of the proceeding, as may appear proper to the court under the circumstances. This section applies to violations of the LBRs which may otherwise not be subject to sanctions under either FRBP 9011 or F.R.Civ.P. 11.

LBR 9013-1. MOTION PRACTICE AND CONTESTED MATTERS

(a) **Applicability.**

- (1) Unless otherwise ordered by the court, parties must file, serve, and set for hearing all contested matters, including motions, whether filed in the bankruptcy case or an adversary proceeding, objections, applications, orders to show cause, and other matters for which a hearing is necessary (collectively, "motions"), in accordance with this rule, any other applicable LBR, the FRBP, and the Bankruptcy Code.
- (2) This rule applies to objections to claims, except as provided in LBR 3007-1.
- (3) This rule applies to motions for summary judgment, except as provided in LBR 7056-1.
- (4) This rule does not apply to a motion to reject a collective bargaining agreement which is governed by 11 U.S.C. § 1113.

(b) **Motion Calendar.**

- (1) Each judge of the court maintains a motion calendar and instructions for self-setting hearings that are available from the clerk and posted on the court's website.
- (2) A party must self-set a motion for hearing at a date and time permitted on the judge's motion calendar in accordance with the judge's self-set calendaring instructions.
- (3) If a judge's calendar does not permit the self-setting of a hearing on a particular type of motion or the judge does not schedule a regular law and motion day, a hearing on the motion must be noticed only with the approval of the judge or courtroom deputy.

(c) **Form and Content of Motion and Notice.**

- (1) **Oral Motions.** Unless otherwise provided by rule or order of the court, an oral motion is not permitted except during trial.

- (2) Notice of Motion. Every motion must be accompanied by written notice of motion specifying briefly the relief requested in the motion and, if applicable, the date, time, and place of hearing. Except as set forth in LBR 7056-1 with regard to motions for summary judgment or partial summary adjudication, or as otherwise ordered, the notice of motion must advise the opposing party that LBR 9013-1(f) requires a written response to be filed and served at least 14 days before the hearing. If the motion is being heard on shortened notice pursuant to LBR 9075-1, the notice must specify the deadline for responses set by the court in the order approving the shortened notice.
 - (3) Motion. There must be served and filed with the motion and as a part thereof:
 - (A) Duly authenticated copies of all photographs and documentary evidence that the moving party intends to submit in support of the motion, in addition to the declarations required or permitted by FRBP 9006(d); and
 - (B) A written statement of all reasons in support thereof, together with a memorandum of the points and authorities upon which the moving party will rely.
 - (4) Exception. Unless warranted by special circumstances of the motion, or otherwise ordered by the court, a memorandum of points and authorities is not required for applications to retain or compensate professionals, motions for relief from automatic stay, or motions to sell, use, lease, or abandon estate assets.
- (d) **Time Limits for Service and Filing of Motions.**
- (1) Persons or Entities to be Served with the Notice and Motion. Except for a motion under LBRs 2014-1(b), 2016-1(a)(2), 3015-1(w) and (x), 7026-1(c), and 9075-1, and subject to LBR 2002-2(a) and FRBP 9034, a motion and notice thereof must be served upon the adverse party (by serving the adverse party's attorney of record, if any; or if the adverse party is the debtor, by serving the debtor and the debtor's attorney, if any; or the adverse party, if there is no attorney of record).
 - (2) Deadline for Filing and Serving of Notice and/or Notice and Motion. The notice of motion and motion must be filed and served not later than 21 days before the hearing date designated in the notice except as set forth in: (A) LBR 7056-1 with regard to motions for summary judgment or partial summary adjudication; (B) LBRs 2014-1(b), 2016-1(a)(2), 3015-1(w) and (x), and 9013-1(o) with regard to motions and matters that may not require a hearing; (C) LBR 3007-1 with regard to motions for orders disallowing claims; and (D) LBR 9075-1 with regard to motions to be heard on an emergency or shortened notice basis. The court, for good cause, may prescribe a different time.
- (e) **Proof of Service**. Every paper filed pursuant to this rule must be accompanied by a proof of service in the form specified in LBR 9013-3.
- (f) **Opposition, Joinders, and Responses to Motions**. Except as set forth in LBR 7056-1 with regard to motions for summary judgment or partial summary adjudication, LBRs

2014-1(b), 2016-1(a)(2), 3015-1(w) and (x), and 9013-1(o) with regard to motions and matters that may not require a hearing, LBR 9075-1 with regard to motions to be heard on an emergency or shortened notice basis or unless otherwise ordered by the court, each interested party opposing, joining, or responding to the motion must file and serve on the moving party and the United States trustee not later than 14 days before the date designated for hearing either:

- (1) A complete written statement of all reasons in opposition thereto or in support or joinder thereof, declarations and copies of all photographs and documentary evidence on which the responding party intends to rely, and any responding memorandum of points and authorities. The opposing papers must advise the adverse party that any reply to the opposition must be filed with the court and served on the opposing party not later than 7 days prior to the hearing on the motion; or
 - (2) A written statement that the motion will not be opposed.
- (g) **Reply Papers.** Except as set forth in LBR 7056-1 with regard to motions for summary judgment or partial summary adjudication, or unless otherwise ordered by the court, the moving party (or the opposing party in instances where a joinder has been filed) may file and serve a reply memorandum not later than 7 days before the date designated for hearing.
- (1) The reply memorandum and declarations or other evidence attached, must respond directly to the opposition papers.
 - (2) Service of reply papers is required only upon the United States trustee subject to FRBP 9034 and LBR 2002-2(a) and on persons or entities (or their attorneys, if any) who filed an opposition to a motion, and must be made by personal service, e-mail, or by overnight mail delivery service. A judge's copy of the reply must be served on the judge in chambers in accordance with LBR 5005-2(d).
 - (3) Unless the court finds good cause, a reply paper not filed or served in accordance with this rule will not be considered.
- (h) **Failure to File Required Papers.** Papers not timely filed and served may be deemed by the court to be consent to the granting or denial of the motion, as the case may be.
- (i) **Evidence on Motions, Responses to Motions, or Reply Papers.** Factual contentions involved in any motion, opposition or other response to a motion, or reply papers, must be presented, heard, and determined upon declarations and other written evidence. The verification of a motion is not sufficient to constitute evidence on a motion, unless otherwise ordered by the court.
- (1) The court may, at its discretion, in addition to or in lieu of declaratory evidence, require or allow oral examination of any declarant or any other witness in accordance with FRBP 9017. When the court intends to take such testimony, it will give the parties 2 days notice of its intention, if possible, or may grant such a continuance as it may deem appropriate.

- (2) An evidentiary objection may be deemed waived unless it is (A) set forth in a separate document; (B) cites the specific Federal Rule of Evidence upon which the objection is based; and (C) is filed with the responsive or reply papers.
- (3) In lieu of oral testimony, a declaration under penalty of perjury will be received into evidence.
- (4) Unless the court orders otherwise, a witness need not be present at the first hearing on a motion.
- (5) If the court decides to hear oral testimony, the matter may be continued to another date for final hearing.

(j) Appearance at Hearing.

- (1) Appearance is Mandatory. Counsel for the moving and opposing parties, and the moving and opposing parties who are appearing without counsel, must be present at the hearing on the motion and must have such familiarity with the case as to permit informed discussion and argument of the motion. The failure of counsel or an unrepresented party to appear, unless excused by the court in advance, may be deemed consent to a ruling upon the motion adverse to that counsel's or unrepresented party's position.
- (2) Waiver of Personal Appearance. With the consent of the court, counsel may waive personal appearance at the hearing. Counsel who have agreed to waive personal appearance must advise the courtroom deputy of such agreement by telephone message or letter which reaches the courtroom deputy by no later than noon on the third day preceding the hearing date. The courtroom deputy will advise the parties by no later than noon on the day preceding the hearing date as to whether the court has consented to the waiver of personal appearance.
- (3) Oral Argument. If the court decides in its discretion to dispense with oral argument on any motion, the courtroom deputy will attempt to give counsel and unrepresented parties notice of the court's intention to do so at least 24 hours prior to the hearing date and time. The court may also dispense with oral argument and waive appearance by tentative or final ruling posted on the court's web site the day before the hearing.
- (4) Telephonic Appearance at Hearing. A party who wishes to appear telephonically must consult the court's web site to determine whether a telephonic appearance on a particular matter is permissible and to review the judge's procedures for telephonic appearances. See LBR 9074-1.

(k) Voluntary Dismissal of Motion.

A party who seeks to voluntarily dismiss a motion must, not less than 2 days prior to the hearing date: (1) give telephonic notice thereof to opposing counsel and the courtroom deputy of the judge before whom the matter is pending; and (2) file with the court, and

serve on the United States trustee and persons or entities who have filed an opposition or other response to the motion, a notice thereof with the court. An order may be required.

- (l) **Motion Previously Denied.** Whenever any motion for an order or other relief has been made to the court and has been denied in whole or in part, or has been granted conditionally or on terms, and a subsequent motion is made for the same relief in whole or in part upon the same or any allegedly different state of facts, it is the continuing duty of each party and attorney seeking such relief to present to the judge to whom any subsequent motion is made, a declaration of a party or witness or certified statement of an attorney setting forth the material facts and circumstances surrounding each prior motion including:
- (1) The date of the prior motion;
 - (2) The identity of the judge to whom the prior motion was made;
 - (3) The ruling, decision or order on the prior motion; and
 - (4) The new or different facts and circumstances claimed to exist, which either did not exist or were not shown upon the prior motion.

The failure to comply with the foregoing requirement is grounds for the court to set aside any order or ruling made on the subsequent motion, and subjects the offending party or attorney to sanctions.

(m) **Continuance.**

- (1) **Ex Parte Motion for Continuance.** Unless otherwise ordered, an *ex parte* motion for the continuance of a hearing under this rule must be filed with the court and served upon all previously noticed parties by facsimile, e-mail, personal service, or overnight mail at least 3 days before the date set for the hearing.
 - (A) The motion must set forth in detail the reasons for the continuance, state whether any prior continuance has been granted, and be supported by the declaration of a competent witness attesting to the necessity for the continuance.
 - (B) A proposed order for continuance must, in accordance with LBR 9021-1(b), be lodged with the court upon the filing of the motion.
 - (C) Unless the *ex parte* motion for continuance is granted by the court at least 1 day before the hearing, the parties must appear at the hearing.
- (2) **Stipulations For Continuances.** Parties stipulating to a continuance of a hearing under this rule must notify the courtroom deputy immediately of their agreement for a continuance. The stipulation is subject to approval by the court under subsection (m)(3) of this rule. Unless the continuance is approved by the court at least 1 day before the hearing, the parties must appear at the hearing. A stipulation

for continuance must contain facts establishing cause for the requested continuance and be submitted to the court in accordance with LBR 9021-1(b)(2) and LBR 9071-1.

- (3) Court Approval. A continuance (whether stipulated to by counsel or not) is not effective unless the continuance is granted in open court, the court approves the continuance in writing, or the clerk or court staff informs the parties that the court has authorized a continuance.
 - (4) Extension of Time Due to Continuance of Hearing Date. Unless an order for continuance states otherwise, a continuance of the hearing of a motion automatically extends the time for filing and serving opposing papers and reply papers.
- (n) **Discovery**. Unless otherwise ordered by the court, Fed.R.Civ.P. 26(a), (d) and (f), as incorporated into FRBP 7026 and LBR 7026-1, do not apply to contested matters under FRBP 9014 and this rule.
- (o) **Motions and Matters Not Requiring a Hearing**.
- (1) Matters That May Be Determined Upon Notice of Opportunity to Request Hearing. Except as to matters specifically noted in subsection (o)(2) below, and as otherwise ordered by the court, any matter that may be set for hearing in accordance with LBR 9013-1 may be determined upon notice of opportunity to request a hearing.
 - (A) Notice. When the notice of opportunity for hearing procedure is used, the notice must:
 - (i) Succinctly and sufficiently describe the nature of the relief sought and set forth the essential facts necessary for a party in interest to determine whether to file a response and request a hearing;
 - (ii) State that LBR 9013-1(o)(1) requires that any response and request for hearing must be filed with the court and served on the movant and the United States trustee within ~~15~~ 14 days after the date of service of the notice; and
 - (iii) Be filed with the court and served by the moving party on all creditors and other parties in interest who are entitled to notice of the particular matter.
 - (B) Motion. The motion and supporting papers must be filed with the notice, but must be served only on the United States trustee and those parties who are directly affected by the requested relief.

- (2) Matters that May Not be Determined Upon Notice of Opportunity to Request Hearing. Unless otherwise ordered by the court, the following matters may not be determined by the procedure set forth in subsection (o)(1) above:
- (A) Objections to claims;
 - (B) Motions regarding the stay of 11 U.S.C. § 362;
 - (C) Motions for summary judgment and partial summary adjudication;
 - (D) Motions for approval of cash collateral stipulations;
 - (E) Motions for approval of postpetition financing;
 - (F) Motions for continuance;
 - (G) Adequacy of chapter 11 disclosure statements;
 - (H) Confirmation of plans in chapter 9, chapter 11, chapter 12, and chapter 13 cases;
 - (I) Motions for orders establishing procedures for the sale of the estate's assets under LBR 6004-1(b);
 - (J) Motions for recognition of a foreign proceeding as either a main or a nonmain proceeding;
 - (K) Motions for the adoption of a chapter 15 administrative order; and
 - (L) Motions for the adoption of a cross-border protocol.
- (3) No Response and Request for Hearing. If the response period expires without the filing and service of any response and request for hearing, the moving party must do all of the following:
- (A) File Declaration of Service and Non-response. Promptly file a declaration attesting that no timely response and request for hearing was served upon the moving party. A copy of the motion, notice, and proof of service of the notice and motion must be attached as exhibits to the declaration. No service is required prior to filing the declaration.
 - (B) Lodge Proposed Order. Lodge a proposed order in accordance with LBR 9021-1, except that: (i) the proposed order need not be served prior to lodging, except as otherwise required in these rules; and (ii) the Notice of Entered Order and Service List must limit service by the court to only the debtor or debtor in possession (and debtor's attorney, if any), and the United States trustee.

- (C) Deliver Copies to Court. Promptly deliver to the court: (i) a copy of the declaration; and (ii) the appropriate proposed order, copies, and envelopes, as specified in LBR 9021-1 and the LOU Procedures.
- (4) Response and Request for Hearing Filed. If a timely response and request for hearing is filed and served, within ~~20~~ 21 days from the date of service of the response and request for hearing the moving party must schedule and give not less than ~~11~~ 14 days notice of a hearing to those responding and to the United States trustee. If movant fails to obtain a hearing date, the court may deny the motion without prejudice, without further notice or hearing.

LBR 9013-2. BRIEFS AND MEMORANDA OF LAW

(a) Trial Briefs.

- (1) Unless otherwise ordered by the court, at least ~~5~~ 7 days before trial is scheduled to commence, each counsel may file and serve a trial brief which may contain:
 - (A) A concise statement of the facts of the case;
 - (B) All admissions and stipulations;
 - (C) A short summary of the points of law involved, citing authorities in support thereof; and
 - (D) Any anticipated evidentiary problems.
- (2) In appropriate cases, the court may require submission of trial briefs.

(b) Form of Briefs.

- (1) Length. A brief must not exceed 35 pages in length, unless otherwise ordered by the court.
- (2) Appendices. Appendices must not include any matters that properly belong in the body of the brief.
- (3) Table of Contents and Table of Authorities. Any brief exceeding 10 pages in length, excluding exhibits, must be accompanied by an indexed table of contents setting forth the headings and subheadings contained in the body thereof and by an indexed table of the cases, statutes, rules, and other authorities cited.
- (4) Unpublished Opinions. If a party cites an unpublished judicial opinion, order, judgment, or other written disposition, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

(c) **Citations.**

- (1) **Acts of Congress.** A citation to an Act of Congress must include a parallel citation to the United States Code by title and section, if codified.
- (2) **Regulations.** A citation to a federal regulation must include a citation to the Code of Federal Regulations by title and section and the date of promulgation of the regulation.
- (3) **Cases.**
 - (A) **Federal.** The initial citation of a United States Supreme Court case must be to the United States Reports. A citation to the Federal Reporter, Federal Supplement, or Federal Rules Decisions must be used where available.
 - (B) **State.** The initial citation to a state court decision must include both the official report and any regional reporter published by West Publishing Company. California parallel citations may be limited to the official reports and California Reporter.
 - (C) **Bankruptcy.** A bankruptcy case citation must be to West's Bankruptcy Reporter, where available.
 - (D) **Unreported Decisions.** Where a citation to the above-named reporters is not available, the party citing the case must provide the court with an unmarked, complete copy of the decision.
 - (E) **Citation Form.** A case citation must include the name and district or circuit of the issuing court and the year of the decision.
- (4) **Internal Page Citation.** A case citation must include a further citation to the page where the proposition of law is found.

LBR 9013-3. PROOF OF SERVICE

(a) **Form.**

- (1) **Declaration.** Proof of service may be made by declaration of the person accomplishing the service. The declaration must include the following information:
 - (A) The day and manner of service;
 - (B) The person and/or entity served;
 - (C) The method of service employed (*e.g.*, electronic, personal, mail, substituted, *etc.*);
 - (D) Identification of the papers served;

- (E) The exact address (including zip code) at which service was made, or the email address or facsimile number if service is by electronic means; and
 - (F) The capacity in which the person or entity was served.
- (2) Identification of Persons or Entities Served. The following example is illustrative, not exhaustive, of the manner in which persons or entities may be identified in a proof of service required by this rule, if service of a document is required to be made upon such person or entity:

(A) Service on Non-attorneys

DEBTOR:

Jane Jones
123 Main St.
Any Town, CA 91234

TWENTY LARGEST UNSECURED CREDITORS:

[The full names and addresses must be listed for each person or entity served in this category. If there are less than 20 unsecured creditors of the estate, the proof of service must indicate that all unsecured creditors were served.]

SPECIAL NOTICE LIST:

[The full names and addresses must be listed for each person or entity served in this category.]

(B) Service on Attorneys

ATTORNEY FOR TRUSTEE:

Harold Smith, Esq.
Smith & Smith
234 First St., Suite 100
Any Town, CA 91234

- (b) **Electronic versus Non-electronic Service.** The proof of service must differentiate between electronic and non-electronic service by: (1) stating that service will be accomplished through an NEF for parties and counsel who are registered CM/ECF Users; and (2) describing the manner by which service was accomplished on any other party or counsel who is not a CM/ECF User or is a CM/ECF User who has not consented to electronic service.
- (c) **Service by Mail.** Proof of service by mail may be made by the declaration of the person mailing or causing the papers to be mailed.
- (d) **Personal Service.** In addition to any other method authorized by law, proof of personal service may also be shown by declaration in the same manner as for mail that the declarant has caused the papers to be served by hand or shown by acknowledgment of service by the

person receiving a copy thereof on the original of the copy served. The declarant must be the attorney for the party, the person in charge of the attorney's office, or the party appearing without counsel.

- (e) **Service by Mail Equivalents.** Proof of service by messenger or overnight courier may be made by the person causing such service.
- (f) **Service by Fax Machine or Email.** Proof of service by fax machine or email may be made by the person causing the paper to be transmitted. Such proof of service must state the telephone number or email address to which the paper was transmitted and the method of confirmation that the transmission was received. A paper exceeding a total of 15 pages must not be served by fax machine, unless expressly authorized by the party receiving the transmission or by court order.
- (g) **Filing.** Except for matters being heard on notice shortened under LBR 9075-1, proof of service must be filed in the clerk's office no later than ~~5~~ 7 days after service and the serving party must bring a conformed copy to the hearing. If the proof or acknowledgment of service is attached to the original document, it must be attached as the last page of the document.
- (h) **Failure to File.** The failure to prepare or file the proof of service required by this rule does not affect the validity of the service. The court may at any time allow the proof of service to be amended or supplied unless to do so would be prejudicial to the rights of any party.

LBR 9013-4. NEW TRIAL OR HEARING ON CONTESTED MATTERS

- (a) **Grounds.** The grounds for a motion for a new trial, a new hearing in a contested matter, or amendment of judgment pursuant to FRBP 9023 or F.R.Civ.P. 59(a) include, but are not necessarily limited to, the following:
 - (1) Irregularity in the proceedings of the court, adverse party, or jury;
 - (2) Any order of the court or abuse of discretion by which the party was prevented from receiving a fair trial;
 - (3) Misconduct by the jury;
 - (4) Accident or surprise that could not have been guarded against by the exercise of ordinary prudence;
 - (5) Newly discovered evidence material to the interest of the party making the application that could not with reasonable diligence have been discovered and produced at trial;
 - (6) Excessive or inadequate damages appearing to have been determined under the influence of passion or prejudice;
 - (7) Insufficiency of the evidence to justify the verdict or other decision; and

(8) Errors of law occurring at the trial.

(b) **Procedure.**

(1) **Error of Law.** If the ground for the motion is error of law occurring at the trial, the error or errors relied upon must be stated specifically.

(2) **Insufficiency of Evidence.** If the ground for the motion is the insufficiency of the evidence, the motion must specify with particularity wherein the evidence is claimed to be insufficient.

(3) **Newly Discovered Evidence.** If the ground for the motion is newly discovered evidence, the motion must be supported by declarations by the party, or the agent of the party having personal knowledge of the facts, showing:

(A) When the evidence was first discovered;

(B) Why it could not with reasonable diligence have been produced at trial or the original hearing on a motion;

(C) What attempts were made to discover and present the evidence at trial or the original hearing on a motion;

(D) If the evidence is oral testimony, the nature of the testimony and the willingness of the witness to so testify; and

(E) If the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are not then available.

(c) **Hearing.** The motion will be determined based upon:

(1) The pleadings and papers on file;

(2) The recorder's transcript or digital recording; and

(3) Declarations, if the ground is other than error of law or insufficiency of the evidence and the facts or circumstances relied on do not otherwise appear in the records of the court.

(d) **Declarations – Time for Filing.** Declarations in support of a motion for a new trial must be filed concurrently with the motion unless the court fixes a different time.

(e) **Calendaring of Motion.** The motion for a new trial must be noticed and heard (if required by the court) as provided in LBR 9013-1.

LBR 9015-1. JURY TRIALS

- (a) **Number of Jurors.** If a trial of the proceeding or matter is to be before a jury, the jury must consist of not less than 6 members. The court may impanel such number of alternate jurors as it determines desirable.

- (b) **Instructions.**
 - (1) Proposed jury instructions must be in writing, and must be filed and served at least ~~5~~ 7 days before trial is scheduled to begin. Each requested jury instruction must:
 - (A) Be set forth in full on a separate page;
 - (B) Embrace only one subject or principle of law; and
 - (C) Not repeat a principle of law contained in any other request.
 - (2) The identity of the party requesting the jury instructions must be disclosed on a cover page only and must not be disclosed on the proposed instructions.
 - (3) The authority or source of each proposed instruction must be set forth on a separate page or document and must not be disclosed on the proposed instruction.

- (c) **Objections to Instructions.**
 - (1) Objections to proposed instructions must be filed and served on or before the first day of trial unless the court permits oral objections.
 - (2) Written objections must be numbered and must specify distinctly the objectionable matter in the proposed instruction. Each objection must be accompanied by citation of authority.
 - (3) Where applicable, the objecting party must submit an alternative instruction covering the subject or principle of law. The alternative instruction must be set forth on a separate paper. The identity of the requesting party or the authority or source of the proposed instruction must not be disclosed on the alternative instruction.

- (d) **Special Verdicts and Interrogatories.**
 - (1) Any request for a special verdict or a general verdict accompanied by answers to interrogatories must be filed and served at least ~~5~~ 7 days before trial is scheduled to commence.
 - (2) Special verdicts and interrogatories must conform to the requirements of F.R.Civ.P. 49, and must not bear any identification of the party presenting the form. Identification must be made only on a separate page appended to the front of the special verdict and interrogatory form.

LBR 9015-2. DEMAND FOR JURY TRIAL**(a) Right to Trial by Jury.**

- (1) A party claiming a right to trial by jury must make a demand as specified in subsection (b) of this rule.
- (2) Nothing contained in this rule shall be deemed to create or imply a right to a jury trial where no such right exists under applicable law.

(b) Demand.

- (1) Time and Form of Demand. A party must demand a trial by jury in accordance with Fed. R.Civ.P. 38(b).
- (2) Statement of Consent. A demand must include a statement that the party does or does not consent to a jury trial conducted by the bankruptcy court. Within ~~10~~ 14 days of the service of the demand and statement of consent or non-consent, all other parties must file and serve a statement of consent or non-consent to a jury trial conducted by the bankruptcy court.
- (3) Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If a party has demanded trial by jury for only some of the issues, any other party within ~~10~~ 14 days after service of the demand or such lesser time as the court may order may serve a demand for trial by jury of any other or all of the issues of fact in the action.
- (4) Determination by Court. On motion or on its own initiative the court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding on a contested petition must be granted.
- (5) Cover Sheet Insufficient. Any notation on Official Form B104, Adversary Proceeding Sheet filed under LBR 7003-1 concerning whether a jury trial is, or is not, demanded does not constitute a demand for jury trial sufficient to comply with F.R.Civ.P. 38(b) or this rule.

(c) Withdrawal of Demand. A demand for trial by jury made in accordance with this rule may not be withdrawn without the consent of the parties.

(d) Waiver.

- (1) The failure of a party to file and serve a demand in accordance with this rule, and to file it as required by FRBP 5005, constitutes a waiver of trial by jury.
- (2) Notwithstanding the failure of a party to demand a jury when such a demand might have been made of right, the court on its own initiative may order a trial by jury of any or all issues.

(e) **Trial by the Court.**

- (1) Subject to the provisions of subsection (d)(2) of this rule, an issue not demanded for trial by jury will be tried by the court.
- (2) Where a demand for trial by jury has been made in accordance with this rule, the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, may consent to trial by the court sitting without a jury.

(f) **Advisory Jury and Trial by Consent.** In all actions not triable of right by jury, the court on motion or on its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(g) **Pretrial Procedure Where Jury Trial Requested.** Where a jury is demanded, all pretrial proceedings, through approval and entry of the pretrial order, will be conducted by the bankruptcy judge.

(h) **Motion for Withdrawal of Reference.**

- (1) Within ~~5~~ 7 days of the entry of the pretrial order, any party may file and serve a motion to the district court to withdraw reference pursuant to LBR 5011-1.
- (2) The failure of any party to file and serve a motion to withdraw reference within the ~~5~~ 7-day time period constitutes consent by all parties to the jury trial being presided over by the bankruptcy judge.
- (3) Nothing in this rule precludes an earlier motion to withdraw reference on the grounds set forth in 28 U.S.C. § 157(d).

LBR 9019-1. SETTLEMENTS

(a) **General.**

- (1) Parties must inform the courtroom deputy immediately by telephone or other expeditious means when a matter set for hearing has been settled out of court and that a stipulation will be filed and a proposed order approving the stipulation will be lodged.
- (2) If a written stipulation executed in compliance with LBR 9071-1 resolving all issues as to all parties is filed at least 2 days before a scheduled hearing and a judge's copy is delivered to chambers, no appearance at the hearing will be necessary, provided that the stipulation is accompanied by a notice and motion to approve compromise of controversy if required under FRBP 9019.

- (b) **Failure to Comply – Sanctions.** The failure to comply with the provisions of this rule may subject counsel to the imposition of sanctions under LBR 9011-3.

LBR 9020-1. ORDER TO SHOW CAUSE RE CONTEMPT

- (a) **General.** Unless otherwise ordered by the court, contempt proceedings are initiated by filing a motion that conforms with LBR 9013-1 and a proposed order to show cause re contempt.
- (b) **Motion.** The motion must be served on the responding party which shall have ~~5~~ 7 days to object to the issuance of the order to show cause.
- (c) **Proposed Order to Show Cause re Contempt.**
 - (1) The proposed order must clearly apprise the party to whom it is to be directed that such party must show cause, if any there is, why that party should not be held in contempt for the allegedly contemptuous conduct.
 - (2) The allegedly contemptuous conduct must be clearly identified in the proposed order and not just by reference to the content of the motion.
 - (3) The proposed order must have blank spaces in which the court may fill in the date, time, and location of the hearing and the dates by which a responsive pleading and reply thereto are due.
- (d) **Hearing on Issuance of Order to Show Cause re Contempt.**
 - (1) If no responsive pleadings to the motion for the order to show cause are received by the court within the time allowed, the court may conclude that there is no objection to issuance of the order to show cause.
 - (2) No hearing on the motion for issuance of the order to show cause will be held unless the court so orders.
 - (3) If the motion for order to show cause is granted without a hearing, the court will issue and forward to the moving party the order to show cause setting the date and time of the contempt hearing.
- (e) **Service of Order to Show Cause re Contempt.**
 - (1) Unless the court orders otherwise in the order to show cause, the moving party must serve the issued order to show cause on the respondent not later than 21 days before the date set for the hearing.
 - (2) Personal service of the issued order to show cause is required on any entity not previously subject to the personal jurisdiction of the court.
 - (3) All other entities may be served either personally or by mail in accordance with FRBP 7004.

- (f) **Hearing on Merits of Order to Show Cause re Contempt.** At the hearing, the court may treat as true any uncontroverted facts established by declaration and limit testimony to controverted facts only.

LBR 9021-1. ORDERS AND JUDGMENTS

- (a) **General.** A proposed order or judgment (collectively, “order”) must be submitted either in paper form or electronically via LOU in accordance with the LOU Procedures and these rules. Unless required as a court-mandated form order pursuant to LBR 9009-1 or otherwise ordered by the court, an order must not contain any attached agreement or other exhibit. If an order approves a motion which is based in whole or part upon an agreement or other exhibit, the order must refer to the docket number and/or title of the document in which the agreement or exhibit is found. Nothing in this rule prevents a prevailing party from serving a copy of an entered order along with a copy of an agreement or other exhibit referred to in the order.

(b) **Preparation, Lodging, and Signing of Orders.**

- (1) **Form of Proposed Order.** A proposed order must be set forth in a separately captioned document complying with LBRs 9004-1 and 9009-1, and must include the Notice of Entered Order and Service List prepared in accordance with subsection (b)(1)(E) of this rule. Except for an order submitted at the hearing, a proposed order must be accompanied by a proof of service reflecting service of the proposed order on the parties required by subsection (b)(1)(E) of this rule and as the court directs.
- (A) **Who Must Prepare.** Unless the court otherwise directs, a proposed order must be prepared by the attorney for the prevailing party.
- (B) **When Due if a Hearing was Scheduled.** If not presented at the hearing, a proposed order must be served and lodged with the clerk within 7 days of the granting thereof. Except as provided in LBR 7056-1(b)(2) and LBR 7016-1(b)(1) or if the presiding judge has posted a tentative ruling authorizing the submission of a proposed order, a proposed order must not be lodged prior to the hearing or trial of the underlying matter.
- (C) **Failure to Lodge Timely Order.** If the prevailing party fails to serve and lodge a proposed order within the allotted time, then any other party present at the hearing may lodge and serve a proposed order. All other parties shall have 7 days within which to file and serve an objection in compliance with subsection (b)(3) of this rule. If no party submits a proposed order, the court may prepare and enter such order as it deems appropriate, including an order to show cause why the motion or proceeding should not be dismissed without prejudice for failure to prosecute.
- (D) **Copies and Envelopes.** Subject to subsection (b)(1)(E) of this rule, LBR 9036-1, and the LOU Procedures, the original proposed order must be accompanied by: (i) stamped, addressed envelopes for all persons or entities

who will be served by the court non-electronically under subsection (b)(1)(E)(i) of this rule, to include only the debtor (and debtor's attorney, if any), movant (or movant's attorney, if any), and all parties (or their attorneys, if any) who filed an opposition or other objection to the relief requested; and (ii) the same number of copies of the proposed order to match the number of envelopes required.

(E) Notice of Entered Order and Service List.

(i) Entered Order Served by the Court. If an entered order is to be served by the court, the proposed order must be accompanied by court-mandated Form 9021-1.1, Notice of Entered Order and Service List, regardless of whether the proposed order is lodged non-electronically or electronically pursuant to the LOU Procedures.

(ii) Entered Order Served Other than by the Court. If an entered order is to be served other than by the court, the party responsible for lodging the proposed order must promptly serve a copy of the entered order and file a proof of service of the entered order in the form and manner required by LBR 9013-3.

(2) Order upon Stipulation. Except as provided in LBR 3015-1(r)(3) and LBR 4001-1(b)(2)(B), a proposed order approving a written stipulation must refer to the title of the stipulation and be contained in a separate document prepared and lodged upon the filing of the stipulation with the court. A proposed order lodged electronically must be prepared and uploaded in accordance with the LOU Procedures.

(3) Proposed Order when Opposition to Motion was Filed.

(A) Service of Proposed Order on Contesting Party. The attorney who has the duty to prepare any order required by this rule must serve a copy of the proposed order on counsel, or party if filed without counsel, who filed an opposition or other objection to the relief requested, either before or on the same day that the order is lodged with the court and must file a proof of service with the order. Alternatively, the attorney preparing the order may present it to opposing counsel for approval as to form before the order is lodged, in which case opposing counsel must immediately approve or disapprove the form of order and return it to counsel who prepared it. Where a proposed order is tendered at the hearing, the order may be lodged without prior service on the opposition.

(B) Separate Objection to Proposed Order. Opposing counsel may, within 7 days after service of a copy of a proposed order prepared pursuant to this rule, file and serve an objection to the form of the order, setting forth the grounds therefor. Opposing counsel must attach as exhibits to the objection (i) a copy of the order that is the subject of the objection and (ii) a copy of the proposed alternative form of order. The proposed alternative form of order so labeled, must be lodged with the objection. A judge's copy of the

objection and proposed alternative form of order must be served on the judge in chambers in accordance with LBR 5005-2(d). The failure to file and serve a timely objection will constitute a waiver of any defects in the form of the order.

- (C) Endorsement of Counsel. Unless the court otherwise directs, a proposed order will not be signed by the judge unless (i) opposing counsel has endorsed thereon an approval as to form; (ii) opposing counsel has stipulated thereto on the record at the hearing, or (iii) the time for objection to a form of order properly served has expired under subsection (b)(3)(B) of this rule. If it finds the ends of justice so requires, the court may conduct a hearing on the proper form of the order or decide any objection thereto without a hearing.
- (4) Proposed Orders on Unopposed Motions. Notwithstanding subsection (b)(3) of this rule, if no opposition was filed or made by a party or counsel at the hearing, no service of the proposed order is required prior to lodging of the proposed order, and the non-opposing party will be deemed to have waived any objection to the form of the order. The court may sign a proposed order on an unopposed motion at the hearing or immediately upon its lodging with the clerk without waiting for the objection period of subsection (b)(3)(B) of this rule to expire.
- (5) Signing of Orders for Absent Judges. Except as otherwise provided by F.R.Civ.P. 63, application for any order on a case or proceeding must be made to the judge to whom the case is assigned. If the judge to whom the case or proceeding is assigned is not available and there is an emergency necessitating an order, the judge's courtroom deputy must be consulted to determine whether a judge of this court has been designated to handle matters in the absence of the assigned judge. If a designation has been made, the application must be presented to the designated judge. If no designation has been made, then the matter must be presented to the duty judge, if any, or in his or her absence, to any other judge in accordance with normal divisional practices. If no emergency exists, the application will be held by the assigned judge's courtroom deputy until the assigned judge is available. Any judge may sign an order for another judge.
- (6) Obtaining Certified Copies of Order. Payment for a certified copy of an order must be made to the cashier in the clerk's office. No checks will be accepted in the courtroom or by courtroom deputies. If a certified copy of a stipulated or default order is desired, the order may either be presented in the courtroom together with a clerk's receipt showing prepayment of the certification fee, or the certified copy may be requested from the clerk's office after the order has been signed and entered.
- (c) Entry of Orders.
- (1) Timing of Taxation of Costs. Entry of an order must not be delayed pending taxation of costs to be included therein pursuant to LBR 7054-1. A blank space must be left in the form of an order for insertion of costs by the clerk after they have been taxed.

- (2) Calculation of Interest. If interest is accruing or will accrue on any order, the party preparing the proposed form of order must indicate by memorandum attached thereto the applicable interest rate as computed under 28 U.S.C. § 1961(a) or 26 U.S.C. § 6621 and the amount of interest to be added for each day the document remains unsigned.
 - (3) By Stipulation with Entry of Order. The court may withhold entry of an order to permit the parties to submit, either separately or jointly by stipulation, the computation of the amount of money to be awarded in accordance with the court's determination of the issues.
 - (4) Contested Computation. If the parties do not stipulate to a computation as provided in this rule, any party may file and serve a computation claimed to be in accordance with the determination of the issues by the court. Within ~~5~~ 7 days of service of the computation, an opposing party may file and serve an objection accompanied by an alternate computation. If no objection is filed within ~~5~~ 7 days, the order may be entered in accordance with the original computation submitted.
 - (5) Hearing on Contested Computation. If it finds the ends of justice so require, the court may place the matter on calendar for hearing provided there is at least ~~5~~ 7 days notice to the parties. After hearing, the court will determine the correct amount on which the order will be entered. The hearing will be limited to a determination of the correct amount to be entered in the order and shall not constitute an opportunity for rehearing or reconsideration of the determination of other issues previously ruled on by the court.
 - (6) Effect of Stipulation to Amount of Costs. A stipulation by the parties to the amount to be entered pursuant to the determination of the issues by the court will not be deemed to be a waiver of any rights of the parties to appeal or otherwise challenge the determination of such issues by the court.
 - (7) Delegation of Authority to Sign Designated Orders. The court may delegate authority to the clerk to:
 - (A) Sign specified form orders involving ministerial matters; and
 - (B) Facsimile stamp specified orders consistent with oral rulings by the court.
- (d) **Duty of Clerk as to an Order Directing an Action by an Official of the United States.** When an order is entered by the court directing any officer of the United States to perform any act, unless such officer is present in court when the order is made, the clerk must forthwith transmit a copy of the order to the officer ordered to perform the act.
- (e) **Amended or Corrected Orders.**
- (1) If an error or omission in the form of an entered or lodged order is discovered, a party in interest may request amendment or correction of the order by filing and serving a motion under LBR 9013-1(a) or LBR 9013-1(o).

- (2) The motion must set forth specifically the changes requested in the form of the order and reasons such changes are necessary and appropriate. A copy of the proposed amended order must be attached as an exhibit to the motion when filed and served.
- (3) The amended order must state in its caption the date of entry of the original order and, if applicable, the date, time, and place of the original hearing.
- (4) If the motion is filed and served pursuant to LBR 9013-1(o), the proposed amended order itself must be lodged at the same time as the required declaration establishing that no timely objection was served.

LBR 9027-1. REMOVAL AND REMAND

- (a) **Notice of Removal.** A notice of removal must be filed with the clerk of the bankruptcy court.
- (b) **Status Conference.**
 - (1) Upon the filing of a notice of removal pursuant to FRBP 9027, the clerk will issue a notice of status conference before the judge to whom the case or proceeding has been assigned.
 - (2) The status conference will be set not later than 45 days after the date that the notice of status conference is mailed, unless otherwise ordered by the court.
 - (3) Within ~~5~~ 7 days of receipt, the removing party must serve the notice of status conference on all other parties to the removed action, including any trustee appointed in the case.
- (c) **Remand.** A motion for remand must be filed with the clerk of the bankruptcy court not later than 30 days after the date of filing of the notice of removal.
- (d) **Filing of Pleadings.**
 - (1) Unless otherwise ordered by the court, the party filing the notice of removal must file with the clerk, in chronological order, copies of all process, papers, minute entries, orders, and other documents filed in the litigation prior to removal, together with a copy of the docket of the removed action from the court where the removed litigation was pending.
 - (2) All such documents must be filed not later than:
 - (A) 30 days after the date of filing of the notice of removal; or
 - (B) if a motion to remand is filed prior to expiration of such 30-day period, ~~+10~~ 14 days after entry of an order denying such motion to remand.

- (e) **Demand for Jury Trial.** Within ~~10~~ 14 days after service of the notice of removal, a party must comply with LBR 9015-2 to preserve any right to a trial by jury.

LBR 9036-1. NOTICE AND SERVICE BY ELECTRONIC TRANSMISSION

(a) **Service By Electronic Means.**

- (1) Upon the addition of any document or item to a CM/ECF docket, whether electronically or non-electronically, an NEF is automatically generated by CM/ECF and sent electronically to all persons or entities that are CM/ECF Users and have consented to electronic service. Regardless of whether it is the duty of the court or of another person or entity to provide notice or service, service of the NEF constitutes notice and service pursuant to the F.R.Civ.P., FRBP, and these rules for all persons and entities that have consented to electronic service.
- (2) A person or entity that is entitled to service of a document, but is not a CM/ECF User or is a CM/ECF User who has not consented to electronic service, must be served as otherwise provided by the F.R.Civ.P., FRBP, and these rules.

- (b) **Exceptions.** Electronic transmission of an NEF does not constitute service or notice of the following documents that must be served non-electronically:

- (1) Service of a summons and complaint under FRBP 7004;
- (2) Service of a subpoena under FRBP 9016;
- (3) Service of a summons and petition under FRBP 1010;
- (4) Service upon the United States trustee of papers listed as exceptions under LBR 2002-2(a)(3); and
- (5) Where conventional service is otherwise required under the F.R.Civ.P., FRBP, LBRs, or by court order.

LBR 9070-1. EXHIBITS

(a) **Trial Exhibits.**

- (1) **Identification.** Unless otherwise ordered by the court, all exhibits to be offered into evidence at trial of an adversary proceeding or contested matter must be numbered and marked for identification with tags available from the clerk's office.
- (2) **Numbering.** Whenever feasible, exhibits of plaintiffs or movants must be marked with numbers, and exhibits of defendants or respondents must be marked with letters.
- (3) **Exhibit Register.** The parties presenting exhibits must tag the exhibits and prepare an exhibit register on the form available from the clerk's office prior to trial.

- (4) Lodging Exhibits. Unless otherwise ordered by the court, the tagged exhibits and completed exhibit register must be delivered in the courtroom to the courtroom deputy or court recorder prior to the beginning of trial.
- (5) Copies. Each party must bring sufficient copies of each exhibit for all counsel, the witness, and the judge.

(b) Retention and Disposition of Trial Exhibits.

- (1) All models, diagrams, documents, or other exhibits lodged with the clerk that are admitted into evidence or marked at trial will be retained by the clerk until expiration of the time for appeal without any appeal having been taken, entry of a stipulation waiving or abandoning the right to appeal, final disposition of any appeal, or order of the court, whichever occurs first.
- (2) If any exhibit is not withdrawn from the clerk's office within 30 days after the person or persons to whom it belongs are given written notice to claim it, the clerk may destroy the exhibit or otherwise dispose of it as the court may approve.

LBR 9071-1. STIPULATION

(a) General.

- (1) Oral Stipulation. An oral stipulation will be enforceable by the court if made and approved in open court.
- (2) Written Stipulation. A written stipulation entered into pursuant to these rules must be filed with the court, but will not be effective until a separate order thereon is entered.
- (3) Order on Stipulation. An order on a stipulation must be prepared and lodged in accordance with LBR 9021-1(b)(2).

(b) Stipulation Requiring Notice under FRBP 4001(d) or 9019.

- (1) Unless otherwise ordered by the court, the notice requirement of FRBP 4001(d) or FRBP 9019 may be satisfied by either serving the motion on each of the entities specified in the applicable rule when it is filed or by serving on such entities a motion for approval of the proposed settlement stipulation pursuant to LBR 9013-1(o).
- (2) A stipulation requiring notice under either FRBP 4001(d) or FRBP 9019 requires approval by the court.

LBR 9074-1. TELEPHONIC APPEARANCES AT COURT HEARINGS

A party who wishes to appear telephonically at a court hearing must consult the court's web site to determine whether a telephonic appearance on a particular matter is permissible and to obtain the judge's procedure for telephonic appearances.

LBR 9075-1. EMERGENCY MOTIONS AND APPLICATIONS FOR ORDERS SHORTENING TIME**(a) Emergency Motion.**

- (1) Scope of Rule. An emergency motion requiring an order on less than 48 hours notice must be obtained in accordance with this rule.
- (2) Obtaining Hearing Date and Time. Unless otherwise ordered by the court, a hearing date and time may be obtained by telephoning the chambers of the judge to whom the case is assigned or such member of the judge's staff as may be designated to schedule hearings on emergency motions. The identity of the designated member of the judge's staff is available from the clerk's office and posted on the court's website. Prior to telephoning chambers, the court's website should be consulted to determine whether the judge has additional procedures or instructions for obtaining a hearing on an emergency motion.
- (3) Contents of Moving Papers. The motion must: (A) state the relief requested, (B) comply with any other applicable provisions of these rules regarding the relief requested, and (C) be accompanied by the declaration of one or more competent witnesses under penalty of perjury that (i) justifies the setting of a hearing on an emergency basis and (ii) supports the granting of the motion itself on the merits. A separate motion for an expedited hearing is not required under this rule.
- (4) Telephonic Notice. Unless otherwise ordered by the court, immediately upon obtaining a hearing date and time, movant must give telephonic notice of the emergency hearing and the substance of the motion to the parties to whom notice of the motion is required to be given under the FRBP and these rules, the United States trustee, and any other party that is likely to be adversely affected by the granting of the motion. Movant must also advise the parties by telephone whether the moving papers will be served by e-mail, fax, or personal service.
- (5) Service of Moving Papers. Unless otherwise ordered by the court, movant must serve the moving papers by e-mail, fax, or personal service on the parties set forth in subsection (a)(4) not later than the time the moving papers are filed with the court.
- (6) Filing of Moving Papers. Unless otherwise ordered by the court, the moving papers must be filed not later than 2 hours before the time set for the hearing and a judge's copy served on the judge in chambers in accordance with LBR 5005-2(d).

- (7) Response to Moving Papers. Any response, written or oral, to the moving papers may be presented at the time of the hearing on the motion.
- (8) Proof of Notice to be Presented at the Hearing. At the time of the hearing, movant must present to the court and file (A) a declaration of the efforts made to give telephonic notice of the hearing and substance of the emergency motion to the parties set forth in subsection (a)(4) and (B) a proof of service of the moving papers.

(b) **Application for Order Shortening Time.**

- (1) Scope of Rule. A party may request that a non-emergency motion be heard on notice shorter than would otherwise be required by these rules. Such a request must be made by written application consistent with court-approved form F 9075-1.1, Application for Order Shortening Time (“application”). The application may be granted for good cause shown in accordance with this rule.
- (2) Contents of Application. Unless otherwise ordered by the court, the application must:
 - (A) Describe the nature of the relief requested in the underlying motion, identify the parties affected by the relief requested in the motion, and state the reasons necessitating a hearing on shortened time; and
 - (B) Be supported by the declaration of one or more competent witnesses under penalty of perjury that justifies the setting of a hearing on shortened time and establishes a *prima facie* basis for the granting of the underlying motion.
- (3) Filing of Application. An application must be filed with the clerk concurrently with the moving papers that are to be heard on shortened notice.
- (4) Service of Application. Unless otherwise ordered by the court, movant must serve the application and the moving papers on each of the parties to whom notice of the underlying motion is required to be given under the FRBP and these rules, the United States trustee, and any other party that is likely to be adversely affected by the granting of the underlying motion. A separate notice of the application is not required.
- (5) Proposed Order Shortening Time. At the time the application and underlying motion are filed, movant must lodge a separate proposed order consistent with court-approved form F 9075-1.2, Order Setting Hearing on Shortened Notice that (A) identifies the parties to whom notice is proposed to be given; (B) states the nature and timing of the proposed shortened notice, which must not be less than 48 hours; (C) states the means of service, *i.e.*, telephone, fax, e-mail, personal service, or as ordered by the court; and (D) contains appropriate blanks for the court to insert the date and time of the hearing and the date for filing and serving the opposition papers.

- (6) Court Ruling on Application. The application will be determined *ex parte* by the court on the basis of the papers submitted with the application, subject to the right of any party to object to the adequacy of notice pursuant to subsection (c) of this rule. The court will promptly notify the movant of its decision on the application and, if granted, the date and time set for the hearing.

- (7) Notice of Hearing.
 - (A) If the application is granted, movant must serve the order setting the hearing on shortened notice on each of the parties to whom notice of the underlying motion is required to be served by the FRBP and these rules, the United States trustee, any other party that is likely to be adversely affected by the granting of the underlying motion, and as otherwise ordered by the court. Notice must be given by telephone, fax, e-mail, personal service, or as ordered by the court.

 - (B) If the application is denied, movant may, unless otherwise ordered by the court, set the underlying motion for hearing on regular notice and serve notice of the hearing in accordance with LBR 9013-1.

- (8) Proof of Service. Proof of service of all required documents must be filed at least 2 days before the hearing, unless otherwise ordered by the court.

- (c) **Objection to Timing of Hearing.** At the hearing on the motion, any party may object to the adequacy of the notice provided and seek a continuance for good cause shown.

APPENDIX II

ATTORNEY DISCIPLINE PROCEDURES IN BANKRUPTCY COURT **(Second Amended General Order No. 96-05)**

(a) APPLICABILITY

This general order establishes a process for court wide discipline of attorneys in the bankruptcy court.

These procedures shall apply when any judge of this court wishes to challenge the right of an attorney to practice before this court or recommends the imposition of attorney discipline intended to apply in all bankruptcy cases in this court.

Nothing in this general order is intended to limit or restrict the authority of any judge to impose sanctions on any attorney in any case or cases assigned to that judge.

- (1) Initiation of Disciplinary Proceedings. If a bankruptcy judge wishes to initiate disciplinary proceedings under this general order, the judge shall prepare and file with the Clerk of Court a written Statement of Cause setting forth the judge's basis for recommending discipline and a description of the discipline the referring judge believes is appropriate.

The clerk shall open a case file, assign a miscellaneous case number, initiate a docket for the file, select three bankruptcy judges of this district at random (excluding the judge who filed the Statement of Cause) to serve on the Hearing Panel (the "Panel") which will determine whether the attorney shall be disciplined and, if so, the type and extent of discipline. The most senior judge assigned to the Panel shall be the Presiding Judge. The clerk shall prepare a Designation of Hearing Panel and Presiding Judge which shall include a signature line for each of the designated judges. The signature of each judge shall certify his or her acceptance of assignment to the Panel. Should any judge decline to serve, the clerk shall select another judge to serve on the Panel, give written notice thereof to the other judges on the Panel and issue a Supplemental Designation of Hearing Panel, which shall contain a signature line for the newly appointed judge to accept the assignment.

Once the clerk has obtained the acceptance of three judges to serve on the Panel, the clerk shall prepare a Notice of Assignment of Hearing Panel, which the clerk will serve on the attorney named in the Statement of Cause (“the attorney”) and on the local Office of the United States Trustee, along with a copy of the Statement of Cause and a copy of this general order. The attorney may file a motion for recusal as to any of the judges assigned to the Panel within ~~ten~~ 14 days of the service of the Notice of the Assignment of Hearing Panel and serve the motion on the Office of the United States Trustee. That motion may be heard by any judge other than the referring judge, any judge assigned to the Panel, or any judge who has declined to serve on the Panel. The assignment of the recusal motion to a judge shall be made at random by the clerk, who shall give notice of the recusal hearing to the attorney and to the Office of the United States Trustee at least ~~10 calendar~~ 14 days before the hearing date.

Once the period for bringing a recusal motion has terminated, or after disposition of any recusal motion, the Presiding Judge shall advise the clerk of the date, time, and place for the Disciplinary Hearing, whereupon the clerk shall prepare a Notice of Disciplinary Hearing and mail the notice to the attorney and to the Office of the United States Trustee at least 21 ~~calendar~~ days before the hearing date.

- (2) Hearing Procedures. The attorney may appear at the Disciplinary Hearing with legal counsel and may present evidence:
- (A) Refuting the statements contained in the Statement of Cause,
 - (B) Mitigating the discipline (i.e., that notwithstanding the validity of the statements in the Statement of Cause the attorney should not be disciplined), and
 - (C) Bearing on the type and extent of disciplinary action appropriate under the circumstances.

The Federal Rules of Evidence shall apply to the presentation of evidence at the Disciplinary Hearing, and an official record of the proceedings shall be maintained as though the Disciplinary Hearing were a contested matter as that term is defined in the Federal Rules of Bankruptcy Procedure. The United States Trustee for the district may appear at the hearing in person or by counsel and may participate in the presentation of evidence as though she or he were a party to the proceeding. If the United States Trustee wishes to appear at the hearing, she or he must file a Notice of Intent to Appear, setting forth the purposes for the appearance, and serve that notice on the attorney at least ~~11~~ 14 days before the hearing. The Panel may disregard written statements or declarations of innocence or in mitigation of the

attorney's conduct unless they are filed with the court with copies delivered promptly thereafter to the chambers of each member of the Panel at least ~~five court~~ 7 days prior to the hearing. Written statements presented to the Panel for consideration as evidence may be disregarded by the Panel if the declarant is unavailable at the hearing for cross-examination and for examination by the Panel.

- (3) Ruling. At the conclusion of the Disciplinary Hearing, the judges of the Panel will adjourn to a private session to consider the matter. The ruling of the Panel will be made by majority vote of the judges on the Panel. The Presiding Judge will assign to a judge in the majority the task of drafting the Panel's Memorandum of Decision setting forth the majority's decision and its reasons. Any member of the Panel may issue a concurring or dissenting opinion which will be made a part of the Memorandum of Decision.

If the Panel imposes discipline on an attorney, the Presiding Judge shall issue a Discipline Order based on the Panel's Memorandum of Decision. That order may provide for any appropriate discipline, including but not limited to revocation or suspension of the right to practice before all the judges of this court. The Discipline Order will become final ~~10~~ 14 days after entry or, if a motion for rehearing is filed, ~~10~~ 14 days after entry of an order denying the attorney's motion for rehearing. The same rule as to finality will apply to a new or revised Discipline Order, if one is issued by the Panel after rehearing.

The Discipline Order shall be sent by the clerk to the Clerk of the District Court. Should the Panel so order, a Discipline Order also may be transmitted by the clerk to the State Bar of California or published in designated periodicals, or both.

If an attorney's practice privileges have been revoked, modified, or suspended by final order of a Panel, the attorney may not appear before any of the judges of this court representing any other persons or entities except in compliance with the terms of the Discipline Order.

- (4) Reinstatement. An attorney whose privileges have been revoked, modified, or suspended under this general order may apply to the Chief Judge of this court for reinstatement of privileges on the following schedule:
 - (A) If privileges were revoked without condition for an unlimited period of time, the attorney may apply for reinstatement after five years from the date the Discipline Order becomes final;

- (B) If privileges were revoked or suspended with specified conditions precedent to reinstatement, the attorney may apply for reinstatement upon fulfillment of the conditions set forth in the Discipline Order; and
- (C) If privileges were suspended for a specified period of time, the attorney may apply for reinstatement at the conclusion of the period of suspension or five years after the Discipline Order becomes final, whichever first occurs.

An Application for Reinstatement of Privileges must include a copy of the Discipline Order, proof that all conditions justifying reinstatement have been fulfilled, and proof that the applicant is in good standing before the United States District Court for the Central District of California and is a member in good standing of the State Bar of California. If the attorney's privileges were revoked, or if the suspension was for a time in excess of five years and was without any conditions precedent to reinstatement, it shall be within the sole discretion of the Chief Judge whether to issue a reinstatement order. If the Chief Judge determines that the attorney is entitled to reinstatement of practice privileges, he or she may issue a Reinstatement Order. Upon entry of the Reinstatement Order, the attorney affected thereby shall be deemed eligible to practice before all the judges of this court except to the extent any judge of this court has issued an order, other than under this rule, denying that attorney the right to appear before that judge or to appear in a particular case.

Upon entry, the clerk shall transmit a copy to all judges of this court and to the attorney, the clerk of the District Court, and to the United States Trustee. In addition, if the Discipline Order was sent to the State Bar or published, the Clerk shall transmit the Reinstatement Order to the State Bar and publish it in the same publication, if possible. If the Chief Judge does not grant the Application for Reinstatement of Privileges, he or she shall issue an order denying the application together with a separate written statement of the reasons for his or her decision. That order will become final ~~10~~ 14 days after entry.

If an attorney's Application for Reinstatement of Privileges is denied, he or she may reapply for reinstatement after one year from the date of entry of the order denying the previous application or within such other time or upon fulfillment of such conditions as may be set forth in the order denying reinstatement.

- (5) Maintenance of Discipline Files. The clerk will place in the court's file for each disciplinary proceeding all documents referred to above and others received or issued by this court relating thereto, and notations thereof shall be entered on the docket for that proceeding. Those files shall be maintained in accordance with applicable law and rules for maintenance of miscellaneous files of this court and shall be available for review and copying by members of the public unless, by order of the Chief Judge or the Presiding Judge of the Panel to which the matter was assigned, access to the file is restricted or prohibited.

The clerk shall close a disciplinary file 30 days after entry of a dispositive order (for example, an Order Re Revocation of Privileges or a Reinstatement Order) in that proceeding unless within that time the clerk receives a Notice of Appeal of any order rendered in the proceeding or other information justifying maintenance of the file in an open status. The clerk shall reopen a disciplinary file upon the request of the attorney, for the convenience of the court, or upon order of any judge of this court, whereupon the clerk shall advise the Chief Judge accordingly. So long as any disciplinary files remain open, the clerk shall provide the Chief Judge a quarterly status report of all such open files to which will be attached copies of their dockets. The Chief Judge may order any such files closed when he or she deems it appropriate, consistent with the provisions hereof and the status of any such matter.

- (6) Appeals. All orders issued pursuant to this rule shall be appealable to the extent permitted by applicable law and rules of court.

APPENDIX III

ADOPTION OF MEDIATION PROGRAM FOR BANKRUPTCY CASES AND ADVERSARY PROCEEDINGS **(~~Second~~ ~~Third~~ Amended General Order No. 95-01)**

1.0 PURPOSE AND SCOPE

The United States Bankruptcy Court for the Central District of California (the “Court”) recognizes that formal litigation of disputes in bankruptcy cases and adversary proceedings frequently imposes significant economic burdens on parties and often delays resolution of those disputes. The procedures established herein are intended primarily to provide litigants with the means to resolve their disputes more quickly, at less cost, and often without the stress and pressure of litigation.

The Court also notes that the volume of cases, contested matters and adversary proceedings filed in this district has placed substantial burdens upon counsel, litigants and the Court, all of which contribute to the delay in the resolution of disputed matters. A Court-authorized mediation program, in which litigants and counsel meet with a mediator, offers an opportunity for parties to settle legal disputes promptly, less expensively, and to their mutual satisfaction. The judges of the Court hereby adopt the Mediation Program for Bankruptcy Cases and Adversary Proceedings (the “Mediation Program”) for these purposes.

It is the Court’s intention that the Mediation Program shall operate in such a way as to allow the participants to take advantage of and utilize a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be those that are appropriate and applicable as determined by the mediators and the parties, and will vary from matter to matter.

Nothing contained herein is intended to preclude other forms of dispute resolution with the consent of the parties.

2.0 CASES ELIGIBLE FOR ASSIGNMENT TO THE MEDIATION PROGRAM

Unless otherwise ordered by the judge handling the particular matter (the “Judge”), all controversies arising in an adversary proceeding, contested matter, or other dispute in a bankruptcy case are eligible for referral to the Mediation Program.

3.0 PANEL OF MEDIATORS

3.1 Selection

- a. The Court shall establish and maintain a panel (“Panel”) of qualified professionals who have volunteered and been chosen to serve as a mediator (“Mediator”) for the possible resolution of matters referred to the Mediation Program. The Panel shall be comprised of both attorneys and non-attorneys.
- b. Applicants shall submit an Application (in the form attached) (the “Application”) to the judge appointed as the administrator of the Mediation Program (the “Mediation Program Administrator”), setting forth their qualifications as described in Paragraph 3.3 below.
- c. The judges of the Court will select the Panel from the applications submitted to the Mediation Program Administrator. The judges will consider each applicant’s training and experience in mediation or other alternative dispute resolution, if any, as well as the applicant’s professional experience and location. Appointments may be limited to keep the Panel at an appropriate size and to ensure that the Panel is comprised of individuals who have broad based experience, superior skills, and qualifications from a variety of legal specialties and other professions.

3.2 Term. Mediators shall serve as members of the Panel for a term of three years unless the Mediator is advised otherwise by the Court or submits a written request to withdraw from the Panel to the Mediation Program Administrator. Reappointment will occur at the judges’ discretion, and an application for reappointment is not required.

3.3 Qualifications

- a. **Attorney Applicants.** An attorney applicant shall certify to the Court in the application that the applicant:
 1. Is, and has been, a member in good standing of the bar of any state or of the District of Columbia for at least ~~five (5)~~ 5 years;
 2. Is a member in good standing of the federal courts for the Central District of California;
 3. Has served as a principal attorney of record in at least ~~three (3)~~ 3 bankruptcy cases (without regard to the party represented) from case commencement to conclusion or, if the case is still pending, to the date of the Application, or has served as the principal attorney of

record for a party in interest in at least ~~three (3)~~ 3 adversary proceedings or contested matters from commencement to conclusion or, if the case is still pending, to the date of the Application; and

4. Is willing to undertake to evaluate or mediate at least one matter each quarter of each year, subject only to unavailability due to conflicts, personal or professional commitments, or other matters which would make such service inappropriate.

- b. **Non-Attorney Applicants.** A non-attorney applicant shall certify to the Court in the Application that the applicant has been a member in good standing of the applicant's particular profession for at least ~~five (5)~~ 5 years, and shall submit a statement of professional qualifications, experience, training and other information demonstrating, in the applicant's opinion, why the applicant should be appointed to the Panel. Non-attorney applicants shall make the same certification required of attorney applicants contained in Paragraph 3.3.a.4.

- 3.4 **Geographic Areas of Service.** Applicants shall indicate on the Application all counties within the Central District in which they are willing to serve. Applicants must be willing to travel to all such counties to conduct Mediation Conferences.

4.0 ADMINISTRATION OF THE MEDIATION PROGRAM

The Chief Judge will appoint a judge of the Court to serve as the Mediation Program Administrator. The Mediation Program Administrator will be aided by assigned staff members of the Court, who will maintain and collect applications, maintain the roster of the Panel, track and compile results of the Mediation Program, and handle such other administrative duties as are necessary.

5.0 ASSIGNMENT OF MATTERS TO THE MEDIATION PROGRAM

- 5.1 **Assignment by Request of Parties.** A contested matter in a case, adversary proceeding, or other dispute (hereinafter collectively referred to as "Matter" or "Matters") may be assigned to the Mediation Program if requested in writing by the parties in the form attached as Official Forms 701 and 702.

- 5.2 **Assignment by Judge.** Matters may also be assigned by order of the Judge at a status conference or other hearing. While participation by the parties in the Mediation Program is generally intended to be voluntary, the Judge, acting *sua sponte* or on the request of a party, may designate specific Matters for inclusion in the Mediation Program. The Judge may do so over the objections of the parties. If a Matter is assigned to the Mediation Program by the Judge at a status conference or other hearing, the parties will be presented with an order assigning the Matter to the Mediation Program, and with a current roster of the Panel. The parties shall normally be given the opportunity to confer and to select a mutually acceptable Mediator and an Alternate

Mediator from the Panel. If the parties cannot agree, or if the Judge deems selection by the Judge to be appropriate and necessary, the Judge shall select a Mediator and an Alternate Mediator from the Panel.

- 5.3 Assignment of Non-Panel Mediators.** The Judge may, in his or her sole discretion, appoint individuals who are not members of the Panel as the Mediator and Alternate Mediator at the request of the parties and for good cause shown.
- 5.4 Use of Official Court Order Assigning Matter to Mediation Program.** The order appointing the Mediator and Alternate Mediator and assigning a Matter to the Mediation Program shall be in the form attached as Official Form 702 (“Mediation Order”). The original Mediation Order shall be docketed and retained in the case or adversary proceeding file and copies shall be mailed, by the party so designated by the Judge, to the Mediator, the Alternate Mediator, the Mediation Program Administrator, and to all other parties to the dispute.
- 5.5 Existing Case Deadlines Not Affected by Assignment to Mediation.** Assignment to the Mediation Program shall not alter or affect any time limits, deadlines, scheduling matters or orders in the case, any adversary proceeding, contested matter or other proceeding, unless specifically ordered by the Judge.
- 5.6 Disclosure of Conflicts of Interest.** No Mediator may serve in any Matter in violation of the standards regarding judicial disqualification set forth in 28 U.S.C. § 455.
- a. Disclosure by Attorney Mediators.** An attorney Mediator shall promptly determine all conflicts or potential conflicts in the manner prescribed by the California Rules of Professional Conduct and disclose same to all parties in writing. If the attorney Mediator’s firm has represented one or more of the parties, the Mediator shall promptly disclose that circumstance to all parties in writing.
 - b. Disclosure by Non-Attorney Mediators.** A non-attorney Mediator shall promptly determine all conflicts or potential conflicts in the same manner as a non-attorney would under the applicable rules pertaining to the non-attorney Mediator’s profession and disclose same to all parties in writing. If the Mediator’s firm has represented one or more of the parties, the Mediator shall promptly disclose that circumstance to all parties in writing.
 - c. Report of Conflict Issue by Parties.** A party who believes that the assigned Mediator and/or the Alternate Mediator has a conflict of interest shall promptly bring the issue to the attention of the Mediator and/or the Alternate Mediator, as applicable, and shall disclose same to all parties in writing.
 - d. Resolution of Conflict Issue by Judge.** If the Mediator and/or the Alternate Mediator does not withdraw from the assignment, the issue shall be brought to

the attention of the Judge in writing by the Mediator, the Alternate Mediator, or any of the parties in the form attached as Official Form 704. The notice shall be filed with the Court, and copies of the notice shall be mailed to the Judge, all of the parties to the dispute, their counsel, if any, the Mediator, the Alternate Mediator, and the Mediation Program Administrator. The Judge will then take whatever action(s) he or she deems necessary and appropriate under the circumstances to resolve the conflict of interest issue.

6.0 CONFIDENTIALITY

- 6.1 In General.** No written or oral communication made, or any document presented, by any party, attorney, Mediator, Alternate Mediator or other participant in connection with or during any Mediation Conference, including the written Mediation Conference statements referred to in Paragraph 7.8 below, may be disclosed to anyone not involved in the Mediation, nor may any such communication be used in any pending or future proceeding in this Court or any other court. All such communications and documents shall be subject to all of the protections afforded by ~~FED. R. BANKR. P.~~ FRBP 7068. Such communication(s) may be disclosed, however, if all participants in the Mediation, including the Mediator, agree in writing to such disclosure. In addition, nothing contained herein shall be construed to prohibit parties from entering into written agreements resolving some or all of the Matter(s), or entering into or filing procedural or factual stipulations based on suggestions or agreements made in connection with a Mediation Program conference (“Mediation Conference”).
- 6.2 Non-Confidentiality of Otherwise Discoverable Evidence.** Notwithstanding the foregoing, nothing herein shall require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of a Mediation Conference.
- 6.3 Written Confidentiality Agreement Required.** The parties and the Mediator shall enter into a written confidentiality agreement in the form attached as Official Form 708.
- 6.4 Effect of Recorded Settlement Agreement on Confidentiality.** An oral agreement reached in the course of a Mediation Conference is not made inadmissible or protected from disclosure if all of the following conditions are satisfied:
- a. The oral agreement is recorded by a court reporter, tape recorder, or other reliable means of sound recording;
 - b. The terms of the oral agreement are recited on the record in the presence of the parties and the Mediator, and the parties express on the record that they agree to the terms recited;

- c. The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect; and
- d. The recording is reduced to writing and the writing is signed by the parties and their counsel, if any, within ~~72 hours~~ 3 days after it is recorded.

6.5 Effect of Written Settlement Agreement on Confidentiality. A written settlement agreement prepared in the course of a Mediation Conference is not made inadmissible or protected from disclosure if the agreement is signed by the settling parties and their counsel, if any, and either of the following conditions are satisfied:

- a. The agreement provides that it is admissible or subject to disclosure, or words to that effect; or
- b. The agreement provides that it is enforceable or binding or words to that effect.

6.6 Court Evaluation of Mediation Program Not Precluded by Confidentiality Provisions. Nothing contained herein shall be construed to prevent Mediators, parties, and their counsel, if any, from responding in absolute confidentiality to inquiries or surveys by persons authorized by the Court to evaluate the Mediation Program.

6.7 Confidentiality of Suggestions and Recommendations of Mediator. The Mediator shall have no obligation to make any written suggestions or recommendations but may, as a matter of discretion, provide counsel for the parties (or the parties, where proceeding in *pro per*), with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Court or made available, in whole or in part, directly or indirectly, to the Judge.

7.0 MEDIATION PROCEDURES

7.1 Selection of Mediator. Counsel for the parties (or the parties, where proceeding in *pro per*), are encouraged to contact the proposed Mediator and Alternate Mediator as soon as practicable (preferably before submitting the Mediation Order to the judge for approval, if possible) to determine the availability of the Mediator and Alternate Mediator to serve in the Matter.

7.2 Availability of Mediator. If the Mediator is **not** available to serve in the Matter, the Mediator shall notify the parties, the Alternate Mediator, and the Mediation Program Administrator of that unavailability by mail in the form attached as Official Form 703 as soon as possible, but no later than ~~seven (7) calendar~~ 7 days from the date of

receipt of notification of appointment. **Upon notification of the Mediator's unavailability to serve, the Alternate Mediator shall automatically serve as the Mediator without the necessity for further court order.**

7.3 Availability of Alternate Mediator. If the Alternate Mediator is **not** available to serve in the Matter, the Alternate Mediator shall notify the parties and the Mediation Program Administrator of that unavailability by mail in the form attached as Official Form 703 as soon as possible, but no later than ~~seven (7) calendar~~ 7 days from the receipt of notification by the Mediator, pursuant to Paragraph 7.1 above, of the Mediator's unavailability to serve.

7.4 Selection of Successor Mediator.

a. By Parties. Within ~~seven (7) calendar~~ 7 days of receipt of the Alternate Mediator's notification of unavailability, the parties shall choose a mutually acceptable Successor Mediator and Successor Alternate Mediator by mail in the form attached as Official Form 702. (This is the same Official Form which is used to appoint the original Mediator and Alternate Mediator, as described in Paragraph 5.4 above. However, the word "Successor" **must** be inserted in the caption of the Mediation Order in front of the words "Mediator" and "Alternate Mediator"). The parties shall file such form with the Court and provide a courtesy copy to the Judge and the Mediation Program Administrator.

b. By Judge. If the parties are unable to agree on a choice of Successor Mediator and Successor Alternate Mediator, they shall notify the Judge and the Mediation Program Administrator of their inability to do so by mail in the form attached as Official Form 704. In that event, the Judge shall appoint the Successor Mediator and Successor Alternate Mediator.

c. Use of Official Court Order Assigning Successor Mediator. When the Successor Mediator and Successor Alternate Mediator have been chosen by the parties and/or appointed by the Judge, the Judge shall execute an order appointing the Successor Mediator and Successor Alternate Mediator in the form attached as Official Form 702. (This is the same Official Form which is used to appoint the original Mediator and Alternate Mediator, as described in Paragraph 5.4 above. However, the word "Successor" **must** be inserted in the caption of the Mediation Order in front of the words "Mediator" and "Alternate Mediator").

7.5 Initial Telephonic Conference. Promptly, but no later than ~~fifteen (15) calendar~~ 14 days of receipt of notification of appointment, the Mediator shall conduct a telephonic conference with counsel for the parties (or the parties, where appearing in *pro per*) to discuss ~~(†)~~ (a) fixing a convenient date and place for the Mediation

Conference, ~~(2)~~ (b) the procedures that will be followed during the Mediation Conference, ~~(3)~~ (c) who shall attend the Mediation Conference on behalf of each party, ~~(4)~~ (d) what material or exhibits should be provided to the Mediator before the Mediation Conference, and ~~(5)~~ (e) any issues or matters that it would be especially helpful to have the parties address in their written Mediation Conference Statements.

7.6 Mediation Conference Scheduling. Also within ~~fifteen (15) calendar~~ 14 days of receipt of notification of appointment, the Mediator shall give notice to the parties of the date, time and place for the Mediation Conference. The Mediation Conference shall commence no later than ~~thirty (30) calendar~~ 30 days following the receipt of notification by the Mediator, and shall be held in a suitable neutral setting such as the office of the Mediator, or at a location convenient and agreeable to the parties and the Mediator.

a. Continuance of Mediation Conference. The date for the Mediation Conference may be continued for a period not to exceed ~~thirty (30) calendar~~ 30 days upon written stipulation between the Mediator and the parties. The stipulation need not be filed with the Court but the parties must mail a copy of it to the Judge and the Mediation Program Administrator.

b. Additional Continuance. At the written request of the parties and for good cause shown, the Judge may, in his or her sole discretion, approve an additional continuance of the Mediation Conference beyond the period specified in Paragraph 7.6.a.

7.7 Mandatory Service of Mediation Order Prior to Mediation Conference. Prior to the Mediation Conference, the parties' counsel shall serve a copy of the Mediation Order on the Mediator, Alternate Mediator, Mediation Program Administrator, and all parties to the dispute.

7.8 Mediation Conference Statements. Each party shall submit a written Mediation Conference statement ("Mediation Statement") directly to the Mediator and to the parties to the Mediation Conference no less than ~~five (5) court~~ 7 days prior to the date of the initial Mediation Conference, unless modified by the Mediator.

a. Format. Mediation Statements shall not exceed ~~ten (10)~~ 10 pages, excluding exhibits and attachments. Mediation Statements shall comply with all of the requirements of ~~Local Bankruptcy Rule 1002-1(d)(1), (2), (3) and (7) Court Manual Section 2-5~~, unless such compliance is excused by the Mediator.

b. Confidentiality. Mediation Statements shall be subject to all of the protections afforded by the confidentiality provisions contained herein and by ~~Fed. R. Bankr. P. FRBP~~ 7068.

- c. **Statements Not Filed with Court.** The Mediation Statements shall **not** be filed with the Court, and the Judge shall not have access to them. In addition, the phrase “**CONFIDENTIAL -- NOT TO BE FILED WITH THE COURT**” shall be typed on the first page of the Mediation Statements.
- d. **Mandatory Contents.** Mediation Statements must:
1. Identify the person(s), in addition to counsel, who will attend the Mediation Conference as representative(s) of the party, who have authority to make decisions;
 2. Describe briefly the substance of the dispute;
 3. Address any legal or factual issue(s) that might appreciably reduce the scope of the dispute or contribute significantly to settlement;
 4. Identify the discovery that could contribute most to preparing the parties for meaningful discussions;
 5. Set forth the history of past settlement discussions, including disclosure of any prior and any presently outstanding offers and demands;
 6. Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses and trial;
 7. Indicate presently scheduled dates for further status conferences, pretrial conferences, trial, or otherwise; and
 8. Attach copies of the document(s) from which the dispute has arisen (*e.g.*, contracts), or the document(s) whose availability would materially advance the purposes of the Mediation Conference.
- e. **Recommended Additional Contents.** Parties may identify in the Mediation Statements the person(s) connected to a party opponent (including a representative of a party opponent’s insurance carrier) whose presence at the Mediation Conference would substantially improve the prospects for making the session productive. The fact that a person has been so identified shall not, by itself, result in an order compelling that person to attend the Mediation Conference.
- f. **Additional Mediation Statements for Mediator Only.** Each party may submit directly to the Mediator, for his or her eyes only, a separate confidential Mediation Statement describing any additional interests, considerations, or matters that the party would like the Mediator to understand before the Mediation Conference begins. Such Mediation

Statements shall not exceed ~~ten (10)~~ 10 pages, excluding exhibits and attachments, and shall comply with all of the requirements of ~~Local Bankruptcy Rule 1002-1(d)(1), (2), (3), and (7)~~ Court Manual Section 2-5 unless such compliance is excused by the Mediator.

7.9 Mandatory Attendance at Mediation Conference.

- a. By Counsel.** Counsel for each party who is primarily responsible for the Matter (or the party, where proceeding in *pro per*) shall personally attend the Mediation Conference and any adjourned session(s) of that conference, unless excused by the Mediator for cause. Counsel for each party shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to settlement, in detail and in good faith.
- b. By Parties.** All individual parties, and representatives with authority to negotiate and to settle the Matter on behalf of parties other than individuals, shall personally attend the Mediation Conference and any adjourned session(s) of that conference, unless excused by the Mediator for cause. Each party shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to settlement, in detail and in good faith.
- c. By Governmental Agencies.** A unit or an agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements.
- d. Telephonic Appearance.** Any party or lawyer who is excused by the Mediator from appearing in person at the Mediation Conference may be required by the Mediator to participate by telephone. This decision is within the Mediator's sole discretion.

7.10 Consequences of Failure to Attend Mediation Conference and Other Violations of Mediation Program Procedures. Willful failure to attend the Mediation Conference and/or other violations of the Mediation Program procedures shall be reported to the Judge by the Mediator by written notice in the form attached as Official Form 705, and may result in the imposition of sanctions by the Judge. The Mediator's notice shall be filed with the Court and copies of the notice shall be mailed to the Judge, all of the parties to the dispute, their counsel, if any, and the Mediation Program Administrator. The Judge will then take whatever action(s) he or she deems necessary and appropriate under the circumstances to resolve the issue of such willful failure to attend the Mediation Conference and/or other violations of the Mediation Program procedures.

7.11 Conduct at the Mediation Conference. The Mediation Conference shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses. The Mediator may conduct continued Mediation Conferences after the initial session where necessary. As appropriate, the Mediator may:

- a. Permit each party (through counsel or otherwise) to make an oral presentation of its position;
- b. Help the parties identify areas of agreement and, where feasible, enter into stipulations;
- c. Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the Mediator that supports these assessments;
- d. Assist the parties, through separate consultation or otherwise, in settling the dispute;
- e. Estimate, where feasible, the likelihood of liability and the dollar range of damages;
- f. Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will assist them as expeditiously as possible to participate in meaningful settlement discussions or to posture the case for disposition by other means; and
- g. Determine whether some form of follow up to the Mediation Conference would contribute to the case development process or to settlement.

7.12 Suggestions and Recommendations of Mediator. If the Mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the client. The Mediator shall have no obligation to make any written comments or recommendations, but may, as a matter of discretion, provide the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Court or made available in whole or in part directly or indirectly, to the Judge.

8.0 PROCEDURE UPON COMPLETION OF MEDIATION CONFERENCE

8.1 Upon the conclusion of the Mediation Conference the following procedures shall be followed:

- a. **If Matter Settled.** If the parties have reached an agreement regarding the disposition of the Matter, the parties, with the advice of the Mediator, shall

determine who shall prepare the writing to dispose of the Matter. If necessary, the parties may, with the Mediator's consent, continue the Mediation Conference to a date convenient for all parties and the Mediator. Where required, they shall promptly submit a fully executed settlement stipulation to the Judge for approval, and shall mail a copy to the Mediation Program Administrator. The Judge will accommodate parties who desire to place any resolution of a Matter on the record during or following the Mediation Conference.

- b. **Mediator's Certificate of Completion of Conference.** Within ~~ten (10)~~ **calendar 14** days of the Mediation Conference, the Mediator shall file with the Court and serve on the parties and the Mediation Program Administrator a certificate in the form attached as Official Form 706, which shows whether there has been compliance with the Mediation Conference requirements and whether or not a settlement has been reached. Regardless of the outcome of the Mediation Conference, the Mediator will **not** provide the Judge with any details of the substance of the Mediation Conference.
- c. **Confidential Evaluation.** In order to assist the Mediation Program Administrator in compiling useful data to evaluate the Mediation Program and aid the Court in assessing the efforts of the members of the Panel, the Mediator shall provide a Mediation Conference Report to the Mediation Program Administrator in the form attached as Official Form 709. The Mediation Conference Report shall **not** be filed with the Court and the Judge shall not have access to it. In addition, the phrase "**CONFIDENTIAL -- NOT TO BE FILED WITH THE COURT**" shall be typed on the first page of the Mediation Conference Report.

9.0 **PRO BONO AND COMPENSATED SERVICE OF MEDIATORS**

9.1 Mandatory Pro Bono Service. The Mediator shall serve on a *pro bono* basis and shall not require compensation or reimbursement of expenses for the first full day of at least one Mediation Conference per quarter per year. If, at the conclusion of the first full day of the Mediation Conference, it is determined by the parties that additional time will be both necessary and productive in order to complete the Mediation Conference, then:

- a. If the Mediator consents to continue to serve on a *pro bono* basis, the parties may agree to continue the Mediation Conference; or

- b. If the Mediator does not consent to continue to serve on a *pro bono* basis, the Mediator's compensation shall be on such terms as are satisfactory to the Mediator and the parties, and shall be subject to the prior approval of the Judge if the estate is to be charged with such expense.

9.2 Compensated Service Upon Completion of Mandatory *Pro Bono* Service. After a Mediator has concluded at least one *pro bono* mediation for the particular quarter, nothing herein shall prohibit the Mediator and the parties from agreeing that the Mediator may be compensated for services rendered by the Mediator. The amount of such compensation and the terms governing the amount and payment shall be as agreed upon among the parties. If applicable, any party or parties to the mediation may apply to the Judge for authorization to compensate the Mediator from property of the estate. Nothing in this provision, however, shall require any party to compensate a Mediator other than as may be mutually agreed upon among the parties and the Mediator.

10.0 IMPLEMENTATION

10.1 The Mediation Program became effective on July 1, 1995.

10.2 Judge Barry Russell is appointed the Mediation Program Administrator.