

**LOCAL
BANKRUPTCY
GUIDE**

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

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1. INTRODUCTION TO BANKRUPTCY PRACTICE GUIDE

This guide is written and maintained for persons using the United States Bankruptcy Court for the Middle District of North Carolina. Its purpose is to inform practitioners of the Bankruptcy Court's preferred practices and procedures.

This guide is not intended to be a source of technical requirements or mandatory rules.¹ Consequently, this guide may not be cited to the Court as grounds for striking or otherwise objecting to the form or content of a pleading or other filing. The legal sufficiency of a matter is determined by reference to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of the United States Bankruptcy Court for the Middle District of North Carolina.

2. BANKRUPTCY COURT ADDRESSES

2.1 Bankruptcy Clerks Offices

2.1.1. Greensboro Office

Mailing Address: United States Bankruptcy Court
P.O. Box 26100
Greensboro, NC 27420-6100

Street Address: United States Bankruptcy Court
101 South Edgeworth Street
Greensboro, NC 27401

Phone Number: (336) 333-5647

2.1.2. Winston-Salem Office

Mailing/Street Address: United States Bankruptcy Court
226 South Liberty Street
Winston-Salem, NC 27101

Phone Number: (336) 631-5340

¹Except for the Chapter 7 and Chapter 11 fee guidelines, which *are* mandatory.

2.2. Bankruptcy Administrator

Mailing Address: United States Bankruptcy Administrator
P.O. Box 1828
Greensboro, NC 27402

Street Address: United States Bankruptcy Administrator
101 South Edgeworth Street
Greensboro, NC 27401

Phone Number: (336) 333-5421

3. GENERAL INFORMATION

3.1. Public Office Hours

The Bankruptcy Clerks Office is open Monday through Friday from 8:00 a.m. to 5:00 p.m. Fees are accepted by the Clerks Office from 8:00 a.m. to 4:00 p.m. The office is closed in observance of all federal holidays. When the holiday falls on a Saturday, the federal holiday is observed on the Friday before. When the holiday falls on a Sunday, the federal holiday is observed on the following Monday.

3.2. Divisions

3.2.1 Filing of Documents in Main and Divisional Offices

Documents for Greensboro and Durham cases should be filed in the Greensboro office. Documents for Winston-Salem cases should be filed in the Winston-Salem office.

3.2.2 Assignment of Cases to Divisions

The Bankruptcy Court for the Middle District of North Carolina consists of three divisions: 1) Greensboro, 2) Winston-Salem and 3) Durham. Cases are routinely assigned to these divisions depending upon the county of the debtor's residence, as follows:

Greensboro

Winston-Salem

Durham

ALAMANCE
CASWELL
GUILFORD
MONTGOMERY
RANDOLPH
RICHMOND
ROCKINGHAM

CABARRUS
DAVIDSON
DAVIE
FORSYTH
ROWAN
STANLY
STOKES
SURRY
YADKIN

CHATHAM
DURHAM
HOKE
LEE
MOORE
ORANGE
PERSON
SCOTLAND

If a debtor resides in a county other than one previously listed, the Clerks Office considers which division is closest to the debtor's residence in determining the divisional assignment.

3.2.3 Assignment of Case Numbers

A bankruptcy case number is comprised of a two digit designation of the year of filing, five additional digits, the chapter number and a letter designation for the division. The first number of the five additional digits will be a 1 if the case is assigned to the Greensboro division, an 8 if the case is assigned to the Durham division, and a 5 if the case is assigned to the Winston-Salem division. For example, case number 98-18888C-7G is a Chapter 7 case filed in 1998, which is assigned to the Greensboro division.

An adversary proceeding number is comprised of a two digit designation of the year of filing and four additional digits. The first number of the four additional digits is a 2 if the case is assigned to the Greensboro division, a 9 if the case is assigned to the Durham division, and a 6 if the case is assigned to the Winston-Salem division. For example, adversary proceeding number 98-6888 is an adversary proceeding filed in 1998, which is assigned to the Winston-Salem division.

3.2.4 Courtroom and Creditors Meeting Room Addresses for Divisions

GREENSBORO

Courtroom #1, Second Floor
101 South Edgeworth Street
Greensboro, NC

Courtroom #2, Second Floor
101 South Edgeworth Street
Greensboro, NC

Courtroom #3, Second Floor
101 South Edgeworth Street
Greensboro, NC

Creditors Meeting Room, First Floor
101 South Edgeworth Street
Greensboro, NC

Winston-Salem

Courtroom, First Floor
226 South Liberty Street
Winston-Salem, NC

Creditors Meeting Room, First Floor
226 South Liberty Street
Winston-Salem, NC

Durham

Courtroom, First Floor
Peoples Security Building
300 West Morgan Street
Durham, NC

Creditors Meeting Room, 4th Floor
Peoples Security Building
300 West Morgan Street
Durham, NC

3.3. Access to Bankruptcy Court Records

3.3.1 Open Records

Open case files for Greensboro and Durham cases are maintained and available for public viewing during normal operating hours in the Greensboro office. Open case files for Winston-Salem cases are maintained and available for public viewing during normal operating hours in the Winston-Salem office.

3.3.2. Closed Records

All cases, regardless of division, closed during the current calendar year are maintained and available for public viewing during normal operating hours in the **Greensboro** office. Cases closed in the previous calendar year may have been transferred to the Federal Records Center in East Point, GA. Requests for examination of closed case files and requests for copies from closed case files should be made to the Clerks Office. If the closed file is located in the Federal Records Center, a retrieval fee is required. For personal, non-business cases, the Clerks Office can arrange for a party to obtain copies directly from the Federal Records Center.

3.4. Bankruptcy Clerks Office Searches

The following methods may be used to obtain case information from the Bankruptcy Court:

3.4.1 VCIS

The Voice Case Information System (VCIS) allows a caller to access basic case information (by case name or number) from any touch-tone telephone at any time by dialing (336) 333-5532 or toll free at (888) 319-0455. There is no fee charged with this service except normal telephone costs incurred for making any call, including long distance charges. The information that can be obtained from VCIS includes the case number, case name, date case was filed, type of case, trustee, debtor's attorney, discharge date, closing date. [Cases available on VCIS are those that were filed on or after July 17, 1989, which are referred to as "BANCAP" cases.]

3.4.2 PACER

The PACER system allows computer access to not only basic case information but also to recent docketing entries, case reports, claims registers, current Bankruptcy Court hearing calendars and creditors meeting calendars. This system, like VCIS, is available at any time. Information on registering for this service and the fees charged may be obtained from the Clerks Office by calling (336) 333-5647 (Greensboro) or (336) 631-5340 (Winston-Salem). [All information described above is available on PACER for BANCAP cases; only Bankruptcy Court hearing calendar information is available on PACER for cases filed prior to July 17, 1989.]

PACER may be accessed from within Greensboro at 333-5389 or toll free from outside of Greensboro at (800) 417-3571.

3.4.3 Internet Site

Much of the information mentioned in this section is now also available on the Court's web page, www.ncmb.uscourts.gov. The site may be accessed through your own internet service provider or by using the public computer terminals, which are located in the Greensboro and Winston-Salem Bankruptcy Clerks Offices. The Clerks Office terminals may be used at no cost during normal office operating hours (8:00 a.m. - 5:00 p.m., Monday through Friday).

3.4.4 RACER

RACER provides access to images of case documents via the internet site. Documents docketed on or after January 4, 1999 in all cases and adversary proceedings have been scanned into the imaging system and are available for viewing. Claims docketed after the above date in Chapter 11 cases and Chapter 7 asset cases are also available for viewing.

3.4.5 Bankruptcy Clerks Office Personnel

Some case information for cases that were filed **prior** to July 17, 1989 (i.e., "PRE-BANCAP" cases) may only be obtained by telephone, mail, or a visit to the Bankruptcy Court. However, a limited amount of information on these cases is available on the web page, www.ncmb.uscourts.gov.

If for some reason information is not available from VCIS, PACER, or the Internet Site, the following information (for any case filed in this judicial district) is available from the Clerks Office staff **without charge:** case name, case number, debtor's social security number, petition filing date, chapter of case, trustee, attorney for debtor, discharge date (if entered) and case closing date (if closed). Contact the Clerks Office staff with this request either by telephone, mail or a visit to the Bankruptcy Clerks Office.

Other case information is available from the Bankruptcy Clerks Office upon written request and payment of \$15 for each item searched.

3.5. Copying Requests

A copy of a document/pleading may be requested either in writing or in person (telephone requests cannot be accepted), at the cost of 50 cents per page copied. The request must clearly and specifically identify the document sought. A search fee in addition to the copy costs will be imposed if the written request does not contain a clear reference to the requested document.

3.6. Creditors Meeting Tapes

Meetings of creditors pursuant to § 341 are recorded on audio cassette tapes. The tapes are kept in the office of the Bankruptcy Administrator and are retained for two years from the date of the meeting. Tapes of a specific meeting are available for review at the Bankruptcy Administrator's Office. The Bankruptcy Administrator will provide a copy of a tape at no charge upon receipt of a blank standard cassette tape. If a request for a copy of the tape is made by mail, the person requesting the copy should also include a self-addressed stamped envelope.

3.7. Bankruptcy Court Libraries

The Bankruptcy Court's libraries are maintained for the exclusive use of the Judges and their staffs.

3.8. Admission to Practice

All duly licensed lawyers who are admitted to practice before the District Court for the Middle District of North Carolina are allowed to

practice law before the Bankruptcy Court for the Middle District of North Carolina. Admission to practice is governed by Rule 103 of the Local Rules of the District Court for the Middle District of North Carolina.

3.9. Fees Schedule

The Bankruptcy Clerks Office assesses bankruptcy petition filing fees pursuant to 28 U.S.C. § 1930. Other fees assessed by the Clerks Office are set forth in the Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930(b).

4. COMMENCEMENT OF CASE

4.1. Matrix Guidelines

1. Lists should be typed in alphabetical order and in a single column with a minimum of one inch margins for all borders
2. Each name/address must consist of no more than 5 (five) total lines, with at least one blank line between each of the name/address blocks.
3. Each line may not exceed 40 characters in length. Abbreviations are helpful, such as street, St.; avenue, Ave.; Corporation, Corp.; etc.
4. DO NOT include the following people: 1) **debtor**, 2) **joint debtor** and 3) **attorney for the debtor(s)**. Their names and addresses will be retrieved automatically by the computer for noticing.
5. DO use 2 digit state abbreviation only, such as NC, FL, MI, etc.
6. If account numbers or attention lines are used, they must appear on the second line of the address.
7. List each creditor only once, regardless of the number of debts that is owed by the debtor.
8. Zip codes should be typed at the end of the last line of the address only. If nine digit zip codes are used, place a hyphen between the two groups of digits.
9. Avoid the following:
 - a. Stray marks. Do not type lines, debtor name, page numbers, or

anything else on the front of the creditor list. Any identifying marks one chooses to add can be typed on the back of the list.

- b. Typing in all caps. Type in upper and lower case as one would in a letter.
- c. Slashes (/) and percent (%) signs. Don't slash numbers, such as zeros. Don't use percent signs; use c/o instead.

4.2. Diskette Guidelines

When a matrix is submitted on diskette, it should conform to the following guidelines.

1. Each address must contain 5 lines or less.
2. Address lines may not exceed 40 characters in length (any excess will be automatically truncated).
3. There must be 1 blank line between each complete address. Do not leave blank lines within an address.
4. The document must be stored in ascii text format (not delimited). If the matrix is prepared in a word processor, it should be exported to the appropriate format before the diskette copy is created. Since procedures vary with each program, consult the user's guide for assistance.
5. Submit the matrix on a 3.5" diskette. Name the document the debtor's last name and use an extension of .txt. For example, a matrix for "John Doe" would be saved as "doe.txt."
6. When a diskette with a matrix is submitted over the counter, another blank diskette is immediately given in exchange.
7. When a diskette with a matrix is received in the mail, one will be returned to the sender provided a stamped, self-addressed mailer is enclosed.
8. Regardless of how a diskette is submitted, the data will be erased and the diskette will become part of the exchange pool.

Refer to Local Bankruptcy Rule LBR 1007-2, which requires that, when feasible, the original matrix shall be submitted on diskette.

4.3. Payment of Filing Fee in Installments

Whenever an application is made for a petition filing fee to be paid in installments, the application shall be accompanied by the first installment payment in an amount not less than \$60.00. Any request for a deviation from this requirement must be set forth in the application, and must offer detailed reasons supporting it.

4.4. Claim for Exempt Property in Chapter 7 Cases

When completing the exempt property claim form (Local Form #91-C) in Chapter 7 cases, all property claimed as exempt and property not claimed as exempt should be listed. Copies of deeds (and other documents of title for real estate), motor vehicle registrations and retirement plans should be attached to the exempt property claim form.

5. CASE ADMINISTRATION

5.1. Disposition of Funds on Hand When a Chapter 13 Case is Dismissed or Converted.

5.1.1 Case Dismissed Prior to Confirmation.

All funds on hand are refunded to the debtor except as otherwise ordered by the Court.

5.1.2 Case Dismissed After Confirmation.

All funds on hand are disbursed to creditors pursuant to the confirmed plan. If funds are received from the debtor's employer after the dismissal order is signed, those funds will be refunded to the debtor.

5.1.3 Case Converted to Chapter 7 Prior to Confirmation.

All funds on hand are refunded to the debtor.

5.1.4 Case Converted After Confirmation.

Cases filed prior to October 22, 1994:

If the Chapter 13 case was filed prior to October 22, 1994, whether the funds are refunded to the debtor or turned over to the Chapter 7 trustee will depend upon the amount on hand. If the amount of funds on hand is \$500.00 or less, the money is refunded to the debtor. If the amount of funds on hand is greater than \$500.00, the refund is mailed to the Chapter 7 trustee, although the refund check is made payable to the debtor.

Cases filed after October 22, 1994:

All funds on hand, regardless of the amount, are refunded to the debtor.

5.2. Service of Orders

Pursuant to Federal Bankruptcy Rule 9022, the Bankruptcy Clerks Office is required to serve notice of entry of Judgments and Orders. Accordingly, the Clerks Office will note the date of entry on each Order, and, unless the Court directs otherwise, will serve copies of the Orders on all contesting parties. To ensure that service is proper, the Bankruptcy Court requires that the preparer of each Order submit the following items to the Clerks Office:

- (1) A certificate of service, which will be signed by the Clerks Office.** The certificate of service must include the Bankruptcy Administrator only in (a) all Chapter 7 and 11 cases, and (b) in Chapter 12 and 13 cases when the order regards (1) fees, (2) a dismissal with prejudice, (3) a motion filed by the Bankruptcy Administrator, or (4) a motion responded to by the Bankruptcy Administrator. If service of the Order upon the Bankruptcy Administrator is required, the certificate should include a notation that service was made by "hand delivery," which is the Clerks Office's method of serving the Bankruptcy Administrator.

The certificate should also include all contesting parties, who commonly include (as applicable) the movant, trustee, debtor in possession, creditors committee chairman, and any party filing a response or objection. If an attorney has appeared for a party, the party's name should be listed in care of the attorney (for example, Joe Debtor c/o Mary Attorney). Because the Clerks Office will serve all copies of the Order, the preparer's name should appear on the list of parties served as well.

If the Greensboro or Winston-Salem Chapter 13 Standing Trustee is included on the certificate, the certificate should include a notation that service was made by "hand delivery," which is the method of service to these Trustees. This notation should not be included for the Durham Standing Trustee.

- (2) **Pre-addressed, stamped envelopes for every party (except for Bankruptcy Administrator and Chapter 13 Standing Trustees) listed on the certificate of service.** The preparer's return address should appear on each envelope. If there are any returned envelopes, the preparer should prepare a new envelope with the correct address, and submit the envelope with a certificate of service (containing only the name and address of the returned envelope(s)) to the Clerks Office. For offices that use a postage meter, it is recommended that the meter date remain blank.
- (3) **Enough copies of the Order for service upon the parties listed on the certificate of service, plus one more copy for scanning purposes.**

6. APPLICATIONS, MOTIONS AND CLAIMS

6.1. Form

Petitions, motions, applications, briefs and other papers submitted for filing must be typewritten, printed, or legibly handwritten on letter size page. The pages shall be unfolded and shall be bound at the top. The margin at the top of each page shall not be less than one inch. Typewritten documents should be double spaced or one and one-half spaced. Mechanically reproduced copies which bear an original signature will be accepted by the Bankruptcy Court as originals.

6.2. Summary Judgment

All motions for summary judgment shall state with particularity the facts supporting such motion. If any of the facts can be determined from documents in the adversary proceeding or case file, the motion should provide specific references to each fact so established and the title, page

number and filing date of the related document.

6.3. Contents of Motion for Relief from Stay

A motion for relief from stay should include the following information as applicable: 1) the amount of the net "pay-off," 2) the amount of any arrearage, 3) an appraisal or affidavit stating the fair market value of the property, 4) copies of documentation evidencing the perfected security interest in the property, 5) a list of all lienholders (if known) who have an interest in the property, and 6) a certificate of service.

In Chapter 7 cases, motions for relief from stay will be noticed on a tentative hearing basis (hearing only if objection) provided the motion or attachment includes the above requirements. If the above items are not provided, the motion will be set for hearing. If the above items are provided and there is written consent of the debtor (or debtor's attorney), Trustee and all creditors affected by the motion, the motion and accompanying Order will be sent to the Bankruptcy Judge for *ex parte* consideration.

In Chapter 13 cases, motions for relief from stay are scheduled for hearing unless the above information relating the property or indebtedness is provided and there is written consent of the debtor (or debtor's attorney), Standing Trustee and all creditors affected by the motion. When these requirements are met, the motion and accompanying Order will be sent to the Bankruptcy Judge for *ex parte* consideration.

In Chapter 11 and 12 cases, motions for relief from stay will be scheduled for hearing.

6.4. Motion to Avoid Lien

In general, a motion to avoid lien (that impairs exemption) will be noticed on a tentative hearing basis (hearing only if objection) if the motion contains the following: 1) a description of the property subject to the lien; 2) the value of the property; 3) the specific nature and amount of the lien to be avoided; and 4) the nature and amount of all other liens on the property. If the motion does not contain the above information, a hearing will be scheduled.

To have a motion to avoid a lien on real property in a Chapter 7 case noticed on a tentative hearing basis, it may be necessary to list the amount of the claimed exemption depending on the circumstances of the individual case. Copies of the form orders for these motions can be found under (and

downloaded from) the *Procedures and Forms* section of the courts web page, www.ncmb.uscourts.gov.

6.5. 2004 Exams

Motions for examination under Rule 2004 should include a statement as to whether the subject of the examination consents to the examination, the examination's location and the examination's date. Depending upon availability, the Bankruptcy Court's premises and Court Reporting Service may be used for examinations under Rule 2004. Unless otherwise agreed or directed by the Court, the movant shall give at least two weeks notice of the examination.

6.6. Objections to Claims

Unless otherwise ordered by the Court, a hearing on objections to claims will be noticed on a tentative hearing basis (hearing only if objection) to the parties as required by the Federal Rules of Bankruptcy Procedure. If a party timely files a response to an objection to claim, then a hearing will be held on the date set forth in the notice. If no responses to an objection are filed within the time provided in the Bankruptcy Clerks Office's notice, the Bankruptcy Court may consider the claims objection without hearing.

If the Bankruptcy Court considers a claims objection without a hearing in a Chapter 7 or 11 case, the party filing the objection shall prepare a proposed Order, which includes the following information: the date of filing the objection, the date of the Bankruptcy Clerks Office's notice, the date that objections were due and a statement that no responses to the objection were filed. In Chapter 12 and 13 cases, the Standing Trustee will prepare the Order.

7. COURTROOM PRACTICES

7.1. Addressing the Bankruptcy Court

Attorneys or *pro se* litigants shall rise when addressing the Bankruptcy Court, and shall make all statements to the Court from behind the counsel table or the lectern facing the Court. They shall not approach the bench, except upon permission of the Court.

7.2. Questioning Witnesses

While questioning witnesses, attorneys or *pro se* litigants shall remain seated behind the counsel table or standing at the lectern. They shall not approach the witness except with the Court's permission for the purpose of examining the witness with respect to an exhibit. Only one attorney for each party may participate in the examination or cross-examination of a witness.

8. EMPLOYMENT OF PROFESSIONALS - § 327

8.1 Attorney for Debtor

8.1.1 Chapter 11

An attorney who represents the trustee or a debtor-in-possession in a Chapter 11 case must file an application with the Bankruptcy Court for approval of that professional's employment. In addition, Court approval for the debtor's, trustee's, creditors' committee's or other appointed committee's employment of other professionals (accountants, appraisers, auctioneers, real estate brokers, and other professionals) is required.

8.1.2 Chapter 7 and Chapter 13

Bankruptcy Court approval is not required for attorneys representing the debtor in cases under Chapter 7 or Chapter 13.

8.2 Other Professionals Representing the Debtor or Trustee

When in doubt as to whether Court approval for the employment of a professional is required under § 327, err on the side of filing the application to avoid a later question as to whether Court approval should have been obtained.

8.3. Disinterestedness & Pre-petition Claims

Professionals who have previously been employed by the debtor pre-petition and who are seeking to be employed to represent the debtor should be cautious with regard to claims that they may have for pre-petition fees at the time of the filing of the petition. Pre-petition indebtedness owed to a professional prevents the professional from meeting the disinterested test of § 327(a), according to rulings made by this Bankruptcy Court. The disinterestedness requirement may be met if (a) the professional waives the

unpaid pre-petition indebtedness; (b) a third party pays the indebtedness; or (c) the professional has received a pre-petition retainer against which the pre-petition indebtedness is drawn prior to the filing of the case, or which retainer is sufficient to pay the pre-petition claim. Full disclosure of pre-petition claims and retainers must be made to the Court in the application, and the burden is upon the applicant to demonstrate that the professional is disinterested. Any waiver of pre-petition indebtedness should be set out in the application for employment.

9. FEE GUIDELINES

All Chapter 7 and Chapter 11 fee applications **shall** comply with the applicable fee guidelines approved by this Bankruptcy Court. Refer to the memoranda regarding "Chapter 7 Fee Application Guidelines" and "Chapter 11 Fee Application Guidelines" for the current fee guidelines. These memoranda may be viewed or downloaded from the web site, www.ncmb.uscourts.gov. Copies are also available at the Clerks Office front counter in both Greensboro and Winston-Salem.

10. ADVERSARY PROCEEDINGS

10.1. Scheduling Meeting

In accordance with Rule 26(f) of the Federal Rules of Civil Procedure and Bankruptcy Rule 7026, this Court requires that the parties to an adversary proceeding meet at least 14 days in advance of the pretrial hearing. At such meeting, the parties are required to discuss the items described in Federal Rule 26(f) with the exception of the disclosures required under Rule 26(a)(1), which have been excluded by Local Bankruptcy Rule 7026-1.

10.2. Scheduling Memorandum

If the parties agree on a discovery plan, they must sign and file a Joint Scheduling Memorandum with the Bankruptcy Court within **10 days** after the previously described scheduling meeting. The parties must also prepare and attach to the memorandum a **separate** Scheduling Order. In the event the Court signs the Scheduling Order, the initial pretrial hearing will be canceled.

If all matters in the Scheduling Memorandum are not agreed to by all parties, a separate Scheduling Memorandum must be filed by each party within **10 days** of the scheduling meeting. Absent notification to the

contrary, the Court will conduct the initial pretrial hearing when separate Scheduling Memorandums are filed.

10.3. Scheduling Memorandum and Request for Additional Time to File an Answer

If a party files a request for additional time to file an answer, the request shall be accompanied by an Order, which addresses the scheduling of a pretrial hearing and the time for filing a Scheduling Memorandum.

10.4. Multiple Requests in a Complaint

The propriety of multiple requests for relief, multiple issues, and the joinder or non-joinder of parties in a single COMPLAINT is governed by the Federal Bankruptcy Rules and the Federal Rules of Civil Procedure. Even in instances where permissive joinder might apply, however, the Court encourages separate complaints for separate defendants unless relief against the defendants arises from the same transaction or identical facts.