

**LOCAL  
BANKRUPTCY  
RULES**

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

These rules are current as of March 15, 2004

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## **LOCAL RULE 1002-1**

Title: PETITION - GENERAL

### **Number of Copies of Petition Required for Filing**

The following number of copies, together with the original, of a voluntary or involuntary bankruptcy petition shall be filed with the Bankruptcy Court:

- |                 |   |
|-----------------|---|
| For Chapter 7:  | original and two copies   |
| For Chapter 11: | corporation and partnership, original and five copies; individual, original and four copies |
| For Chapter 12: | original and three copies   |
| For Chapter 13: | original and one copy   |

The copy requirements listed above include copies required for service on the Bankruptcy Administrator. They do not include any filed stamped copies for the debtor or the debtor's attorney.

See also LBR 5005-1 for return of "Filed" stamped copies of documents.

## **LOCAL RULE 1004-1**

Title: PETITION - PARTNERSHIP

### **Evidence of General Partners' Consent**

Within 15 days of the filing of the petition, a written consent to the petition, which is signed by all general partners, shall be filed with the Bankruptcy Court.

See also Federal Bankruptcy Rule 1004 for requirement that general partners consent to the petition.

## **LOCAL RULE 1006-1**

Title: FEES - INSTALLMENT PAYMENTS

(a) **Chapter 13 Cases**

In a Chapter 13 case, a meeting of creditors called pursuant to Section 341 of the Bankruptcy Code shall not be concluded until the entire filing fee is paid.

(b) **Chapter 7 Cases**

In a Chapter 7 case, a debtor shall not receive a discharge until the entire filing fee is paid.

## **LOCAL RULE 1007-1**

Title: LISTS, SCHEDULES & STATEMENTS

(a) **Corporate Resolution**

Within fifteen days of the filing of a voluntary bankruptcy petition by a corporation, the debtor shall file the original or a certified copy of the resolution of the debtor's board of directors authorizing the filing of the bankruptcy petition.

(b) **Schedule of Creditors**

Any Schedule of Creditors containing more than five creditors should be alphabetized.

See also LBR 1007-2 for mailing matrix requirements.

## LOCAL RULE 1007-2

Title: MAILING - LIST OR MATRIX

(a) **Matrix Required Upon Filing**

As a requirement of filing, all voluntary Chapter 7, 11 and 12 petitions must be accompanied by an alphabetized matrix containing the names and addresses of all parties-in-interest, including the creditors and appropriate governmental agencies. The mailing matrix shall be submitted on a computer diskette as set forth in instructions provided by the Clerks Office.

(b) **Matrix Required Upon Chapter 13 Conversion**

As a requirement of conversion by the debtor of a Chapter 13 case to any other bankruptcy relief chapter, the debtor must file, at the time of filing the motion for conversion, an alphabetized matrix containing the names and addresses of any additional creditors to be included in the bankruptcy case and/or any creditors not included under the Chapter 13 Plan. If there are five or more additional creditors, the matrix shall be submitted on a computer diskette as set forth in instructions provided by the Clerks Office.

See also Local Bankruptcy Guide Section 4.1 for guidelines on creditors matrix, and Local Bankruptcy Guide Section 4.2 for guidelines on submission of matrix on diskette.

## LOCAL RULE 1009-1

Title: AMENDMENTS TO LISTS & SCHEDULES

(a) **Service of Amendment to Petition, List, Schedule or Statement in Chapter 7 and 11 Cases**

Any amendment to a petition, list, schedule (including Exemption Form 91-C) or statement in a Chapter 7 or 11 case shall be accompanied by a certificate of service in the form of a statement of the date and manner of service, and of the names and addresses of the persons served, certified by the person who made the service. **All creditors and other parties in interest** shall be notified of any amendment to the claim for property exemptions.

(b) **Amendments to Schedules or Matrix to Add New Creditors**

If an amendment adds additional creditors, the filer shall serve a copy of the Notice of Creditors' Meeting on all new creditors.

(c) **Copies Required for Filing Amendments**

The number of copies required for filing an amendment to the petition shall be the same as the number of copies required for filing a petition pursuant to Local Bankruptcy Rule 1002-1.

Refer to the Bankruptcy Court Fee Schedule or contact the Bankruptcy Clerks Office to determine the amount of fee due for amending the schedule of creditors.

## LOCAL RULE 1020-1

Title: CHAPTER 11 SMALL BUSINESS CASES - GENERAL

(a) **Election to be Considered a Small Business in a Chapter 11 Reorganization Case.**

In a Chapter 11 case, a debtor that is a small business under § 1121(e) of the Bankruptcy Code may elect to be considered a small business by filing a written statement of election no later than 60 days after the date of the order for relief or by such later date as the Bankruptcy Court, for cause, may fix.

(b) **Approval of the Disclosure Statement.**

(1) **Conditional Approval.** If the debtor is a small business and has made timely election to be considered a small business in a Chapter 11 case, the Bankruptcy Court may, upon application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Bankruptcy Rule 3016. On or before conditional approval of the disclosure statement, the Bankruptcy Court shall

- (A) fix a time within which the holders of claims and interests may accept or reject the plan;
- (B) fix a time for filing objections to the disclosure statement;
- (C) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
- (D) fix a date for the hearing on confirmation.

(2) **Application of Bankruptcy Rule 3017.**

If the disclosure statement is conditionally approved, Bankruptcy Rule 3017(a), (b), (c), and (e) do not apply. Notice of conditional approval of the disclosure statement shall be given in accordance with Bankruptcy Rule 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed at any time before final approval of the disclosure statement or by an earlier date as the Bankruptcy Court may fix, transmitted to the Bankruptcy Administrator, and served on the debtor, the Trustee, any committee appointed under the Bankruptcy Code, and any other entity designated by the Bankruptcy Court.

## **LOCAL RULE 2002-1**

Title: NOTICE TO CREDITORS & OTHER INTERESTED PARTIES

(a) **Notice and Hearing or Period of Objection**

The period of notice and hearing or period of objection required by the Bankruptcy Court shall be not less than ten (10) days, unless Bankruptcy Rule 2002, other Bankruptcy Rule, or the Bankruptcy Court, for cause, otherwise provides.

(b) **Filing Request for Notice in Chapter 13 Cases**

If a request to receive notice is made in a Chapter 13 case, a copy of the request shall be sent to the appropriate Chapter 13 Standing Trustee.

## **LOCAL RULE 2004-1**

Title: DEPOSITIONS & EXAMINATIONS

(a) **Service of Motions for Examination Under Rule 2004**

Motions for examination under Rule 2004 shall be served upon the debtor, Trustee (if any), the party whose examination is requested, and any other party required to be served by the Federal Rules of Bankruptcy.

(b) **Use of Videotape for Recording Examinations**

Only upon the consent of all parties will a motion for the use of videotape as the sole method for recording an examination be considered by the Bankruptcy Court.

See also Local Bankruptcy Guide Section 6.5 for guidelines on 2004 examinations.

## LOCAL RULE 2007.1-1

Title: TRUSTEES AND EXAMINERS (CH. 11)

### **Election of Trustee in a Chapter 11 Case.**

(a) **Request for an Election.**

A request to convene a meeting of creditors for the purpose of electing a Trustee in a Chapter 11 case shall be filed and transmitted to the Bankruptcy Administrator in accordance with Bankruptcy Rule 5005 within the time prescribed by § 1104(b) of the Bankruptcy Code. Pending Bankruptcy Court approval of the person elected, a person appointed Trustee under § 1104(d) shall serve as Trustee.

(b) **Manner of Election and Notice.**

An election of a Trustee under § 1104(b) of the Code shall be conducted in the manner provided in Bankruptcy Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given in the manner and within the time provided for notices under Bankruptcy Rule 2002(a). A proxy for the purposes of voting in the election may be solicited by a committee appointed under § 1102 of the Code and by any other party entitled to solicit a proxy under Bankruptcy Rule 2006.

(c) **Application for Approval of Appointment and Resolution of Disputes.**

If it is not necessary to resolve a dispute regarding the election of the Trustee or if all disputes have been resolved by the Bankruptcy Court, the Bankruptcy Administrator shall promptly file an application for approval of the appointment of the elected person, except that the application does not have to contain names of parties in interest with whom the Bankruptcy Administrator has consulted. If it is necessary to resolve a dispute regarding the election, the Bankruptcy Administrator shall promptly file a report informing the Bankruptcy Court of the dispute. If no motion for the resolution of the dispute is filed within ten (10) days after such report is filed, the Bankruptcy Administrator will file a motion to approve the appointment of a Trustee.

## LOCAL RULE 2016-1

Title: COMPENSATION OF PROFESSIONALS

### Chapter 11 Quarterly Fee Applications

Any professional employed in a chapter 11 case under § 327 of the Bankruptcy Code may file a motion to allow the filing of quarterly statements for interim allowance. Unless the Bankruptcy Court orders otherwise, the quarterly statements shall be filed on or before the 20th day of the month following the end of the calendar quarter for services rendered for the previous quarter. Absent Bankruptcy Court Order, any late filed statements shall be processed in the succeeding quarter.

See also Local Bankruptcy Guide Section 8 for guidelines on employment of professionals.

## LOCAL RULE 2090-1

Title: ATTORNEYS - ADMISSION TO PRACTICE

### (a) Attorneys Licensed in this Judicial District

Except as otherwise provided herein, only those persons who are admitted to practice before the United States District Court for this judicial district will be allowed to practice before the Bankruptcy Court.

### (b) Pro Hac Vice Appearance

(1) Any attorney who is a member in good standing of the bar of any District Court of the United States other than the Middle District of North Carolina, may, upon written motion and in the discretion of the Bankruptcy Court, appear and participate pro hac vice in any case or proceeding without general admission before this Bankruptcy Court *if*:

(A) the movant requesting to appear pro hac vice must file a written motion containing the following:

1. The movant's name, residence, office address and telephone number, and state bar number;
2. The courts to which the movant has been admitted to practice and the respective dates of admission;

3. A statement by the movant of the good standing to practice before the courts to which the movant has been admitted;
4. Whether the movant has been disciplined by any court or administrative body, and if disciplinary proceedings are pending, the details of such proceedings, and whether the movant resigned while disciplinary proceedings were pending;
5. A list of case name and numbers for the three years preceding the application in which the movant has filed for permission to appear pro hac vice before any court within the state of North Carolina;
6. A statement certifying that the movant has read and is familiar with the Local Bankruptcy Rules, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence; and

(B) such privilege is not abused by frequent or regular appearances in separate cases to such a degree as to constitute the maintenance of a regular practice of law in the Middle District.

- (2) Any attorney seeking to be admitted to practice pursuant to the provisions of this Rule shall attach a proposed order to the application and shall specifically provide therein that "this order shall not be considered admission to practice generally before this Bankruptcy Court or the United States District Court."

(c) **Attorney Representation of Debtor**

Any attorney who represents a debtor in a bankruptcy case shall remain the responsible attorney of record for all purposes including the representation of the debtor in all matters in the case (including, but not limited to, adversary proceedings and all contested matters) until the case is closed or the attorney is relieved from representation upon motion and Bankruptcy Court order.

(d) **Government Representation**

Any attorney who is an employee of a government agency may represent that governmental agency before the Bankruptcy Court.

See also LBR 9011-2 for appearances of pro se parties.

## LOCAL RULE 2090-2

Title: ATTORNEYS - DISCIPLINE & DISBARMENT

(a) **Standards of Conduct**

Acts or omissions by an attorney practicing before this court which violate the Rules of Professional Conduct adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Rules of Professional Conduct adopted by this court are the Revised Rules of Professional Conduct of the North Carolina State Bar adopted by the Supreme Court of North Carolina, as amended from time to time by that state court, except as otherwise provided by a specific rule of this court.

(b) **Disciplinary Enforcement**

For misconduct as defined in these rules, and after notice and an opportunity to be heard, any attorney practicing before this court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

(c) **Duty to Inform the Clerk**

Any attorney practicing before this court shall, upon being subjected to public discipline by any court or by the state bar of any state, promptly inform the clerk of such action.

(d) **Referral of Complaints to Counsel or to a State Bar**

When allegations of misconduct by an attorney practicing before this court come to the attention of a judge of this court, whether by complaint or otherwise, the judge may refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Alternatively, the judge may refer the matter to the appropriate state bar. The court is not restricted from taking such other disciplinary action as is within the inherent authority of the court.

(e) **Referral to Counsel**

Should the judge decide to refer a disciplinary matter to counsel for investigation and the prosecution of a formal disciplinary proceeding, the proceeding shall be referred and shall proceed and be conducted as set forth in Rule 83.11 of the Local Rules of the United States District Court for this judicial district.

(f) **Attorneys Specially Appearing**

Whenever an attorney appears in this court for purposes of a particular proceeding, the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(g) **Jurisdiction**

Nothing contained in these rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt or other sanctions under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, these local rules or other applicable law.

**LOCAL RULE 3001-1**

Title: CLAIMS AND EQUITY SECURITY INTERESTS - GENERAL

(a) **Transfer Of Claim With Waiver**

If the Clerks Office's standard form titled "NOTICE OF TRANSFER OF CLAIM AND WAIVER OF NOTICE" is signed by the attorney for the transferor, the transfer is deemed completed upon the filing of the notice.

(b) **Transfer of Claim With No Waiver**

Every transfer of claim shall contain the following information:

1. the transferor's specific name and address of record in the case;
2. the transferee's name and address;
3. the amount of the claim being transferred as listed on the proof of claim;
4. the claim or account number being transferred;
5. whether a proof of claim has been filed by the transferor or transferee or deemed filed pursuant to §1111(a) of the Bankruptcy Code;
6. whether the transfer is unconditional; and
7. if the transfer is not unconditional, whether the transfer was made for security purposes (for example, a transfer made as collateral on a loan).

The above information shall be included in a separate document for each claim. The original and at least two copies of each transfer must be submitted. A Notice of Transfer with the transferor's address of record in the case shall be submitted with the original and each copy.

See also Local Bankruptcy Guide Section 6.6 for guidelines on filing objections to claims.

## LOCAL RULE 3002-1

Title: PLACE OF FILING CLAIMS

(a) **Filing Claims in Chapter 13.**

Proofs of claim in Chapter 13 cases shall be filed in duplicate directly with the office of the Standing Trustee to whom the case is assigned. The address of the proper Standing Trustee will be shown on the notice of creditors' meeting. Claims will be dated and stamped as received as of the date they arrive in the Standing Trustee's office, and the claim shall be deemed filed with the Bankruptcy Court as of that date.

(b) **Filing Claims in Chapter 7, 11 and 12 cases.**

Unless otherwise ordered by the Bankruptcy Court, proofs of claim in Chapter 7, 11 and 12 cases shall be filed in the office of the Clerk of the Bankruptcy Court.

(c) **Return of Filed Stamped Copies of Claims.**

Any person desiring return of a "Filed" stamped office copy of a claim filed must provide an extra copy of the claim plus a self-addressed envelope with sufficient return postage.

See also LBR 9007-1 for service of pleadings on the Bankruptcy Administrator.

## **LOCAL RULE 3003-1**

Title: CHAPTER 11 CLAIMS

(a) **Period for Filing Chapter 11 Claims**

In a Chapter 11 case, an entity other than a governmental unit shall file a proof of claim (if required to be filed) within ninety (90) days after the date first set for the meeting of creditors called pursuant to Section 341(a) of the Bankruptcy Code, except as otherwise specified by order of the Bankruptcy Court.

(b) **Debtor Notification of Chapter 11 Creditor of Disputed, Contingent or Unliquidated Claim**

In Chapter 11 cases, the debtor shall notify each creditor whose claim is listed on the schedules as contingent, disputed or unliquidated of that fact within fifteen (15) days after filing the schedules, or within fifteen (15) days after the addition of such creditor to the schedules. Within three (3) days after service has been made, the debtor shall mail a certificate of service to the Bankruptcy Clerks Office. Failure to timely notify a creditor that its claim is listed as disputed, contingent or unliquidated shall result in the creditor's claim being deemed filed in the amount listed as disputed, contingent or unliquidated, as though a proof of claim had been filed by the creditor.

## **LOCAL RULE 3018-1**

Title: BALLOTS - VOTING ON PLANS

Unless otherwise ordered, all original ballots shall be returned directly to the Bankruptcy Clerks Office by the voting parties. Any proponent of a plan shall file a summary of ballots as they appear in the Bankruptcy Court record. The summary shall be filed with the Bankruptcy Clerk not later than 3 business days prior to the hearing on confirmation unless otherwise set by the Bankruptcy Court.

## LOCAL RULE 4001-1

Title: AUTOMATIC STAY - RELIEF FROM

(a) **Lifting of Stay Upon Abandonment**

In Chapter 7, 11,12 and 13 cases, the abandonment of property pursuant to Section 554 of the Bankruptcy Code shall have the effect of lifting the automatic stay (of Section 362(a) of the Bankruptcy Code) with respect to the property abandoned.

(b) **Secured Creditor Inquiry with Chapter 13 Debtor**

In Chapter 13 cases, affected allowed secured creditors may inquire of the debtor in writing of the following:

1. the status of insurance coverage on property used as collateral;
2. whether insurance premiums are paid directly by the debtor;
3. the location, inspection, and appraisal of the collateral; and
4. the status of direct payments.

Copies of all inquiries shall be sent to the debtor's attorney and the Chapter 13 Standing Trustee.

(c) **Taxing Authority Actions Authorized**

In Chapter 7 and 13 cases, the Internal Revenue Service and the North Carolina Department of Revenue are authorized:

1. To assess tax liability shown on voluntarily filed returns and other agreed-to-tax liabilities;
2. To offset any refund due a debtor in a Chapter 7 or Chapter 13 case against any allowed, secured or priority tax due the United States Government or the State of North Carolina provided promptly upon receipt of the refund the taxing authority shall file an amended proof of claim; and
3. To make income tax refunds, in the ordinary course of business, directly to the debtor unless otherwise directed by the Bankruptcy Court or otherwise instructed in writing by the Chapter 7 or Chapter 13 Trustee.

See also Local Bankruptcy Guide Section 6.3 for guidelines on filing motions for relief from stay.

**LOCAL RULE 4003-1**

Title: EXEMPTIONS

Each debtor who is an individual in a Chapter 7 case shall file any claim for exempt property pursuant to Section 522(b)(1) of the Bankruptcy Code on Local Form #91-C, which form is available from the Clerk of the Bankruptcy Court; the debtor's filing of Local Form #91-C must be referenced in Schedule 'C' of the debtor's schedules.

**LOCAL RULE 4008-1**

Title: REAFFIRMATION

**Reaffirmations Agreements**

Reaffirmation Agreements shall be filed on Form B240 as it has been altered to conform with North Carolina state law.

## **LOCAL RULE 5005-1**

Title: FILING PAPERS - REQUIREMENTS

(a) **Filing of Papers with the Bankruptcy Clerks Office.**

All pleadings (including but not limited to complaints, answers, motions and applications), and all prepared orders, shall be tendered by the party submitting such document to the Bankruptcy Clerks Office, and not to the Bankruptcy Judge.

(b) **Return of Filed Stamped Copies.**

Any person desiring return of a "Filed" stamped office copy of a document filed must provide an extra copy of the document plus a self-addressed envelope with sufficient return postage.

## **LOCAL RULE 5005-4**

Title: ELECTRONIC CASE FILING

Local Bankruptcy Rule 5005-4 shall be read in conjunction with the Administrative Guide for Electronic Filing. The guide is available from the Office of Clerk of the United States Bankruptcy Court for the Middle District of North Carolina and is maintained on the court's web site at: [www.ncmb.uscourts.gov](http://www.ncmb.uscourts.gov). In the event of a conflict between the Local Bankruptcy Rules and the Administrative Guide, the Local Bankruptcy Rules shall control.

## LOCAL RULE 5005-4(1)

Title: ASSIGNMENT TO SYSTEM AND FILING REQUIREMENTS

(a) **Assignment:**

All opened cases are assigned to the Electronic Case Filing System ("ECF System").

(b) **Filing:**

All petitions, motions, memoranda of law, and other pleadings or documents required to be filed with the court in connection with the case must be electronically filed via the internet except as provided in these rules or in exceptional circumstances preventing a Filing User from filing electronically. A Filing User is defined as a person who has been issued a login and password by the court, in order to file documents electronically.

(c) **Exception to Filing Requirement:**

Notwithstanding the foregoing, attorneys and others who are not Filing Users as defined by Local Bankruptcy Rule 5005-4(2) are not required to electronically file pleadings and other documents in cases assigned to the ECF System.

## LOCAL RULE 5005-4(2)

Title: ELIGIBILITY, REGISTRATION AND PASSWORDS

(a) **Eligibility and Registration:**

Attorneys admitted to the practice in this court (including those admitted pro hac vice), bankruptcy administrators and their assistants, private trustees, and others as the court deems appropriate, may register as Filing Users of the court's Electronic Case Filing System. Registration is in the form prescribed by and available from the clerk. The registration form also is contained in the Administrative Guide for Electronic Filing maintained by the clerk and published on the court's web site.

(b) **Non-represented Parties:**

If the court permits, a party to a pending action who is not represented by an attorney may register as a Filing User in the ECF System solely for purposes of that action. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User effective upon the attorney's appearance in the case.

(c) **Electronic Notice and Service; Waivers:**

- (a) Electronic Service via Bankruptcy Rule 7005: Registration as a Filing User constitutes a waiver of the right to receive notice or service by first class mail or personal delivery and consent to electronic service pursuant to Local Bankruptcy Rule 5004-4(9) of all documents properly filed and served electronically which are permitted to be served pursuant to Bankruptcy Rule 7005. Waiver and consent pursuant this provision also applies to notice of the entry of an order or judgment under Rule 9022 of the Federal Rules of Bankruptcy Procedure.
- (b) Service pursuant to Bankruptcy Rule 7004 and service of Subpoenas pursuant to Bankruptcy Rule 9016: As to all documents required to be served pursuant Bankruptcy Rules 7004 and/or 9016, service must be accomplished as required under the applicable rule.

(d) **Passwords:**

Once registration is completed, the Filing User will receive notification of the Filing User login and password. Filing Users agree to protect the security of their login information and passwords and to immediately notify the clerk if they learn that their login information or password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

(e) **Termination of Participation:**

- (1) A Filing User may withdraw from participation in the ECF system by filing a notice of withdrawal from the ECF System with the Bankruptcy Clerks Office.
- (2) The Court, for cause, may suspend a Filing User from participating in the ECF System after notice and a hearing.

### LOCAL RULE 5005-4(3)

Title: CONSEQUENCES OF ELECTRONIC FILING; DEADLINES

(a) **Filing:**

Electronic transmission of a document to the Electronic Case Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the clerk, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this court, and constitutes entry of the document on the docket kept by the clerk under Rule 5003 of the Federal Rules of Bankruptcy Procedure.

(b) **Official Record:**

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the clerk, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing.

(c) **Deadlines Unchanged by Electronic Filing:**

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before 12:00 midnight, Eastern Time, in order to be considered timely filed that day.

### LOCAL RULE 5005-4(4)

Title: ENTRY OF COURT ORDERS

(a) **Filing of Court Orders; Effect of Electronic Filing on Court Orders:**

All orders, decrees, judgments and proceedings of the court will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Rules 5003 and 9021 of the Federal Rules of Bankruptcy Procedure. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

(b) **Submission of Documents for Judge's Signature:**

Any document submitted for a judge's signature in a case assigned to the ECF System must be submitted electronically to the clerk's office in the format specified by the Administrative Guide.

**LOCAL RULE 5005-4(5)**

Title: FORMAT; ATTACHMENTS AND EXHIBITS

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing.

**LOCAL RULE 5005-4(6)**

Title: SEALED DOCUMENTS

Documents ordered to be placed under seal must be filed conventionally, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. A court order authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of any order authorizing the filing of documents under seal must be attached to the documents and delivered to the clerk.

**LOCAL RULE 5005-4(7)**

Title: ORIGINAL SIGNATURES AND RETENTION REQUIREMENTS

Electronically filed documents that require original signatures from any person other than the Filing User must be maintained by the Filing User in paper form, bearing the original signatures, for four years after the closing of the case or proceeding in which the documents were filed. Upon the written request of any party in interest, the Filing User must make the original signed documents available for inspection, unless otherwise ordered by the court.

## LOCAL RULE 5005-4(8)

Title: SIGNATURES AND CERTIFICATION

(a) **Electronic Filing Constitutes Signature and Certification:**

The use of the login and password of the Filing User to electronically file any petition, pleading, motion, claim, or other document shall constitute the signature of that Filing User on the electronically filed document for purposes of the Federal Rules of Bankruptcy Procedure, including Rule 9011, the Local Rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the login and password also shall constitute certification by the Filing User, and by any agent authorized by the Filing User to use the login and password, that: (1) all persons indicated to have signed the document have actually executed the original prior to electronic filing; and (2) the Filing User has authorized the electronic filing of the executed document.

(b) **Use of Login/password:**

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an agent of the Filing User authorized to use such login and password.

(c) **Form of Electronic Signature:**

Electronically filed documents requiring a signature shall either: (1) show an image of such signature as it appears on the original document or appended as an image file, in which case such document shall indicate that it has been filed electronically, or (2) bear the name of the signatory preceded by an "s/" typed in the space where the signature would otherwise appear, as follows: s/ Jane D. Doe.

## LOCAL RULE 5005-4(9)

### Title: SERVICE OF DOCUMENTS BY ELECTRONIC OR CONVENTIONAL MEANS: CALCULATION OF RESPONSE TIME

(a) **Notice of Electronic Filing to Filing Users:**

A Filing User who electronically files a pleading or other document in a case assigned to the ECF System may transmit or cause to be transmitted a "Notice of Electronic Filing" to other Filing Users entitled to notice or service of the document under the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules.

(b) **Transmission of Notice of Electronic Filing:**

The Notice of Electronic Filing may be transmitted by e-mail, hand, facsimile, or by the U.S. Mail, first-class postage prepaid. Transmission of the Notice of Electronic Filing to Filing Users constitutes service or notice of the filed document on Filing Users.

(c) **Conventional Service of Documents and Notice to Non-consenting Parties:**

Parties who have not consented to electronic service of documents or notice must be served with a paper copy of any electronically filed pleading or other document.

(d) **Calculation of Response Time:**

Rule 9006(f) of the Federal Rules of Bankruptcy Procedure shall apply to the calculation of deadlines for responses to electronically filed pleadings and other documents.

## LOCAL RULE 5005-4(10)

### Title: NOTICE AND SERVICE OF COURT ORDERS

(a) **Notice and Service to Filing Users:**

Immediately upon the entry of an order, judgment, decree or other document generated by the court in an action assigned to the ECF System, the clerk will electronically transmit a Notice of Electronic Filing to all Filing Users in the case. Electronic Transmission of the Notice of Electronic Filing constitutes the notice required by Rule 9022 of the Federal Rules of Bankruptcy Procedure, and constitutes service of the document to Filing Users.

(b) **Notice and Service to Non-consenting Parties:**

The clerk must give conventional notice and service of documents in accordance with the Federal Rules of Bankruptcy Procedure to any person who has not consented to electronic service.

**LOCAL RULE 5005-4(11)**

Title: TECHNICAL FAILURES

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

**LOCAL RULE 5005-4(12)**

Title: LIMITATION ON PUBLIC ACCESS

11 U.S.C. §107 applies to documents filed on the ECF system.

**LOCAL RULE 5010-1**

Title: REOPENING CASES

A party seeking to reopen a case for purposes not related to the debtor's discharge, shall file a motion with the court and shall give twenty days notice to all parties-in-interest. The motion shall be served upon the Bankruptcy Administrator, the previously appointed trustee, and any party being added, if any, as a creditor or party-in-interest in the case. The motion shall be accompanied by the appropriate fee to reopen the case, a notice containing the hearing date as obtained from the court and proof of service. The motion shall also state that any objections to reopening the case must be filed at least three days prior to the hearing.

## LOCAL RULE 5011-1

Title: WITHDRAWAL OF REFERENCE

(a) **Form of Request; Place for Filing**

A request for withdrawal, in whole or in part, of the reference of a case or proceeding referred to the Bankruptcy Court, other than a sua sponte request by a bankruptcy judge, shall be by motion filed with the Clerk of the Bankruptcy Court. All such motions shall be accompanied by the proper filing fee. In addition, all such motions shall clearly and conspicuously state that 'RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT COURT JUDGE.'

(b) **Stay**

The filing of a motion to withdraw the reference does not stay proceedings in the Bankruptcy Court. The procedures relating to stay shall be those set forth in FRBP 5011.

(c) **Designation of Record**

The moving party shall serve on all interested parties and file with the Clerk of the Bankruptcy Court, together with the motion to withdraw the reference, a designation of those portions of the record of the case or proceeding in the Bankruptcy Court that the moving party believes will reasonably be necessary or pertinent to the District Court's consideration of the motion. Within ten (10) days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. If the record designated by any party includes a transcript of any hearing or trial, or a part thereof, that party shall immediately after filing the designation, deliver to the court reporter and file with the Clerk of the Bankruptcy Court a written request for the transcript and make satisfactory arrangements for the payment of its cost. All parties shall take any action necessary to enable the Clerk to assemble and transmit the record.

(d) **Responses to Motions to Withdraw the Reference; Reply**

Opposing parties shall file with the Clerk of the Bankruptcy Court, and serve on all parties to the matter for which withdrawal of the reference has been requested, their written responses to the motion to withdraw the reference, within ten (10) days after being served with a copy of the motion. The moving party may serve and file a reply within ten (10) days after service of the response.

(e) **Transmittal to and Proceedings in District Court**

When the record is complete for purposes of transmittal, but without awaiting the filing of any transcripts, the Clerk of the Bankruptcy Court shall promptly transmit to the Clerk of the District Court the motion and the portions of the record designated. After the opening of a docket in the District Court, documents pertaining to the matter under review by the District

Court shall be filed with the Clerk of the District Court, but all documents relating to other matters in the bankruptcy case or adversary proceeding or contested matter shall continue to be filed with the Clerk of the Bankruptcy Court.

### **LOCAL RULE 5020-1**

Title: CORPORATE DISCLOSURE

#### **Disclosure of Corporate Parent**

Any nongovernmental corporate party identified as follows shall file a statement identifying all of its parent corporations and listing any public company that owns 10% or more of the party's stock:

1. Corporate debtor filing a petition in a voluntary case;
2. Petitioning corporate creditor in any involuntary case;
3. Corporate party serving on a creditors' committee;
4. Corporate party to any adversary proceeding; and
5. Corporate party to any contested matter which arises in any pending bankruptcy case.

A party shall file the statement with its initial pleading or within 10 days of being appointed to a creditors committee. A party shall supplement the statement within a reasonable time of any change in the information.

### **LOCAL RULE 5071-1**

Title: CONTINUANCE

No continuance of hearing or trial (whether stipulated to by counsel or not) shall be effective unless (1) the Bankruptcy Court announces it in open Court, (2) the Bankruptcy Court approves it by written Order or (3) the courtroom deputy informs the parties that the Bankruptcy Court has authorized the requested continuance. Requests for continuances of Chapter 7 and Chapter 11 creditors' meetings shall be made to the Bankruptcy Administrator's office, and requests for continuances of Chapter 13 creditors' meetings shall be made to the appropriate Chapter 13 Standing Trustee's office.

**LOCAL RULE 5073-1**

Title: PHOTOGRAPHY, RECORDING DEVICES AND BROADCASTING

All photographic, recording and broadcasting equipment is prohibited from the courtrooms and their environs without Bankruptcy Court permission.

**LOCAL RULE 7003-1**

Title: COVER SHEET

**Adversary Proceeding Cover Sheet.**

All complaints initiating adversary proceedings shall be accompanied by a fully completed Adversary Cover Sheet (Form B-104).

**LOCAL RULE 9004-1**

Title: PAPERS - REQUIREMENTS OF FORM

Each bankruptcy case docket number used in the caption of documents or other papers filed with the Bankruptcy Court shall include the case chapter and division assigned to the case.

**LOCAL RULE 9006-1**

Title: TIME PERIODS

Unless otherwise ordered or noticed, to ensure review and consideration at a scheduled hearing, any response to a pleading in a contested matter, including, but not limited to, a brief, memorandum or objection, shall be filed not less than three (3) business days before the scheduled hearing date on which the motion is scheduled to be heard.

## LOCAL RULE 9007-1

### Title: GENERAL NOTICE AND SERVICE PROVISIONS

(a) **Designation of Parties to Provide Notice**

The Bankruptcy Clerk is authorized to designate the parties who shall provide such notice to creditors and parties-in-interest as required under the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court.

(b) **Service Required on Trustee and Attorney for Debtor-in-Possession**

In cases where a Trustee has been appointed, any and all pleadings (except claims) in all matters under the Bankruptcy Code shall be served on the Trustee whether or not such Trustee is a party to the proceeding. In Chapter 11 cases, the attorney for the debtor is to be served in like manner for all matters.

(c) **Service Required on Bankruptcy Administrator**

In Chapter 7, 11 and 12 cases, the Bankruptcy Administrator shall be served with all pleadings and documents required to be filed with the Clerk of the Bankruptcy Court, and any other documents specifically requested by the Bankruptcy Administrator. In Chapter 13 cases, the Bankruptcy Administrator shall be served with fee applications, motions to dismiss with prejudice, responses to documents filed by the Bankruptcy Administrator and any other documents specifically requested by the Bankruptcy Administrator.

See also LBR 1002-1 for manner of providing copies of petitions to the Bankruptcy Administrator, and see also LBR 3002-1 for filing of proof of claims.

## LOCAL RULE 9011-2

Title: PRO SE PARTIES

An individual may appear pro se. All partnerships, corporations, and other business entities (other than an individual conducting business as a sole proprietorship) that desire to appear in cases or proceedings before this Bankruptcy Court must be represented by an attorney duly admitted to practice before the Bankruptcy Court, except in the following instances:

- (a) A business entity, employed as a professional pursuant to 11 U.S.C. § 327, may file an interim or final fee application pro se;
- (b) A business entity may file a claim pro se;
- (c) A business entity may appear pro se at meeting of creditors called pursuant to section 341 of the Bankruptcy Code.
- (d) A business entity may file a response to a notice transferring the business entity's claim.

Any individual appearing *pro se* is subject to these Local Rules, as well as the Federal Bankruptcy Rules and the Bankruptcy Code.

See also LBR 2090-1 for attorney admission procedures.

## LOCAL RULE 9011-4

Title: SIGNATURES

(a) **State Bar Code Number**

The state bar number of an attorney shall appear on every petition, pleading, motion or other paper filed with the Bankruptcy Court.

(b) **Type or Printed Name of Attorney or Party Filer**

Every petition, pleading, motion or other paper signed by an attorney or by a party who is not represented by an attorney shall contain a printed or typed name below all signatures.

## LOCAL RULE 9013-1

Title: MOTION PRACTICE

(a) **Multiple Requests for Relief.**

Multiple requests for relief in a single motion will be allowed for filing purposes if those requests are based upon identical facts or arise out of the same transaction. Multiple requests for relief not based on identical facts or not arising out of the same transaction shall be filed in separate documents.

(b) **Motions Regarding Property.**

Any person filing a motion for relief from stay, abandonment or sale of property, or other relief with respect to property, shall attach thereto copies of all documents evidencing the related indebtedness and perfected lien status unless otherwise on file with the Bankruptcy Court in which case a specific reference should be made to the pleading in which such copies are attached.

See also Local Bankruptcy Guide Section 10.4 for guidelines on filing multiple requests in a complaint and Local Bankruptcy Guide Section 6 for guidelines on filing applications, motions and claims.

## LOCAL RULE 9013-2

Title: BRIEFS & MEMORANDA OF LAW

At the time the original of a brief or memoranda of law is filed, a working copy of the brief or memoranda for use by the Bankruptcy Judge shall be delivered to the Bankruptcy Clerks Office.

## **LOCAL RULE 9014-1**

### **TITLE: DISCOVERY IN CONTESTED MATTERS**

For the purpose of Bankruptcy Rule 7026, which is made applicable to contested matters by Bankruptcy Rule 9014, the initial court hearing on a motion, application, or objection commencing a contested matter shall be treated as the scheduling conference under Federal Rule 16(b). The discovery conference required by Federal Rule 26(f) shall be held at least 7 calendar days (including intervening Saturdays, Sundays, and holidays) prior to the initial court hearing, unless the hearing has been set on less than 20 days notice, in which event the discovery conference shall be held not later than the business day prior to the hearing. A discovery plan, if one is required, may be presented orally at the hearing. This rule does not prevent the court from disposing of the contested matter at the initial hearing if the Court determines that material facts are not in dispute or that discovery is not needed. Unless notified by the Court to the contrary or unless all parties agree that discovery is needed and present a discovery plan in accordance with this rule, parties should always assume that the Court will hear evidence at the initial hearing.

**LOCAL RULE 9015-1**

TITLE: JURY TRIAL

**(a) Demand.**

**(1) Form.**

A demand for jury trial shall state whether the party consents to the trial being conducted by the Bankruptcy Court.

**(2) Determination by the Bankruptcy Court.**

On motion or on its own initiative, the Bankruptcy Court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded.

**(3) Statement of Consent.**

Within the later of (I) the time required for the filing of a response to the pleading in which a jury demand is set forth or (ii) 14 days after the filing of a jury demand, any other party shall file a statement as to that party's consent to trial by the Bankruptcy Court.

**(b) Applicability of Certain Federal Rules of Civil Procedure.**

Rules 38, 39, and 47-51 of the Federal Rules of Civil Procedure, and Rule 81(c) F.R. Civ. P., insofar as they apply to jury trials, apply to cases and adversary proceedings except that a demand made under Rule 38(b) F.R. Civ. P. shall be filed in accordance with Bankruptcy Rule 5005.

**(c) Applicability of Local Rules of the District Court.**

To the extent applicable, the Local Rules of the United States District Court for the Middle District of North Carolina shall govern matters pertaining to the conduct of jury trials in this Bankruptcy Court.

## LOCAL RULE 9019-2

### Title: MEDIATED SETTLEMENT CONFERENCE

#### (a) **Order for Mediated Settlement Conference**

- (1) **Order By Court:** The court may, by written order, require parties and their representatives to attend a pre-trial mediated settlement conference in any adversary proceeding or contested matter pending in the court.
- (2) **Timing of the Order:** The court may issue the order at any time after the time for filing answers has expired in an adversary proceeding or after a response is filed in a contested matter.
- (3) **Content of Order:** The court's order shall:
  - (A) Require that a mediated settlement conference be held in the case;
  - (B) Establish a deadline for the completion of the conference;
  - (C) State clearly that the parties have the right to select their own mediator as provided by section (b)
  - (D) State the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to section (b); and
  - (E) State that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the court.
- (4) **Motion to Dispense with Mediated Settlement Conference:** A party may move the court, within ten (10) days after the court's order, to dispense with the conference. The motion shall state the reasons the relief is sought, and shall be filed with the clerk of court and served on all opposing parties. Any party may file a written objection specifically stating his or her reasons for opposing the motion. The judge will rule upon such motion without a hearing.
- (5) **Motion for Court Ordered Mediated Settlement Conference:** In cases not ordered to mediated settlement conference, any party may move the court to order such a conference. The motion shall state the reasons why the order should be allowed and shall be served on non-moving parties. Objections may be filed in writing with the court within ten (10) days after the date of the service of the motion. Thereafter, the judge shall rule upon the motion without a hearing.
- (6) **Motion to Authorize the Use of Other Settlement Procedures:** Within ten (10) days of the court's mediation order, any party may move the court to authorize the use of some other settlement procedure in lieu of a mediated settlement conference. The motion shall state the reasons the authorization is requested and that all parties consent to the motion. The deadline for completion of the authorized settlement procedure shall be as provided by the rules authorizing the procedure or, if none, the deadline shall be as ordered for the mediated settlement conference.

#### (b) **Selection of Mediator**

- (1) **Selection of Certified Mediator by Agreement of Parties:** The parties appearing of record may select a mediator certified pursuant to the rules of the Supreme Court of North

Carolina. The plaintiff shall file with the court an approved Designation for Mediator notice form indicating Selection of Certified Mediator by Agreement within twenty-one (21) days of the court's order. The notice shall state the name, address, and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and the parties have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to the rules of the Supreme Court.

- (2) **Nomination and Court Approval of Noncertified Mediator:** The parties may select a mediator who does not meet the certification requirements of the Supreme Court but who, in the opinion of the parties and the judge, is otherwise qualified by training or experience to mediate the action.

If the parties select a noncertified mediator, the plaintiff or plaintiff's attorney shall file with the court an approved Designation of Mediator notice form indicating Nomination for Noncertified Mediator within twenty-one (21) days of the court's order. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and the parties have agreed upon the selection and rate of compensation. The judge shall rule on the nomination without a hearing.

- (3) **Appointment of Mediator by the Court:** If the parties cannot agree upon the selection of a mediator, the plaintiff shall submit a Designation of Mediator form indicating a Motion for Court Appointment of Mediator to the court on behalf of the parties. The motion must be filed within twenty-one (21) days after the court's order and shall state that the parties and their attorneys have had a full and frank discussion concerning the selection of a mediator and have been unable to agree.

The motion shall state whether any party prefers a certified attorney mediator, and if so, the judge shall appoint a certified attorney mediator. The motion shall state that all parties prefer a certified, nonattorney mediator, and if so, the judge shall appoint a certified, nonattorney mediator if one is on the list of certified mediators desiring to mediate cases in the district. If no preference is expressed, the judge may appoint a certified attorney mediator or a certified nonattorney mediator.

Upon receipt of a Motion for Court Appointment of Mediator, or in the event the plaintiff has not filed a Notice of Selection of Certified Mediator or Nomination of Noncertified Mediator with the court within twenty-one (21) days of the court's order, the judge shall appoint a mediator certified pursuant to these Rules. Only mediators that have indicated their desire to mediate cases in the Middle District shall be appointed.

- (4) **Mediator Information Directory:** To assist the parties in the selection of a mediator by agreement, a central directory of information on all certified mediators who wish to mediate cases in the Middle District will be collected and maintained by the clerk of court.
- (5) **Disqualification of Mediator:** Any party may move for an order disqualifying the mediator. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to this rule. Nothing in this provision shall preclude mediators from disqualifying themselves upon written notice to the judges and the parties.

(c) **The Mediated Settlement Conference**

- (1) **Where Conference Is to Be Held:** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the United States Bankruptcy Courthouse or other public or community building in the Middle District. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.
- (2) **When Conference Is to Be Held:** The court's order issued pursuant to section (a)(2) shall state a date of completion for the conference. As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date.
- (3) **Request to Extend Date of Completion:** A party, or the mediator, may request the judge to extend the deadline for completion of the conference. The request shall state the reasons the continuance is sought and shall be served by the movant upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the judge.

The judge may grant the request and enter an order setting a new date for the completion of the conference, which date may be set at any time prior to trial. The order shall be served on all parties and on the mediator by the person who sought the extension.
- (4) **Recesses:** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.
- (5) **Mediated Settlement Conference is not to delay other proceedings:** The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the judge.

(d) **Duties of Parties, Representatives, and Attorneys:**

- (1) **Attendance:** The following persons shall physically attend the entire mediated settlement conference until an agreement is reduced to writing and signed as provided by section (d)(3) or an impasse has been declared, unless excused by the judge or by the mediator with approval of all parties and attorneys:
  - (A) **Parties:**
    - (i) All individual parties;
    - (ii) Any party that is not a natural person or a government entity shall be represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been authorized to decide on behalf of such party whether and on what terms to settle this action; and
    - (iii) Any party that is a governmental agency shall be represented at the conference by an employee or agent who is not such party's outside counsel and who has authority to decide on behalf of such party whether and on what terms to settle the action; provided, if under law proposed settlement terms can be approved only by a board, the representative

shall have authority to negotiate on behalf of the party and to make a recommendation to that board.

- (B) **Insurance Company Representatives:** A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier which may be obligated to pay all or part of any claim presented in the action. Each carrier shall be represented at the conference by an officer, employee or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of the carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have decision making authority.
  - (C) **Attorneys:** At least one counsel of record for each party or other participant whose counsel has appeared in the action.
  - (2) **Notifying Lien Holders:** Any party or attorney who has received notice of a lien or other claim upon proceeds recovered in the action shall notify the lien holder or claimant of the date, time, and location of the mediated settlement conference and shall request the lien holder or claimant to attend the conference or make a representative available with whom to communicate during the conference.
  - (3) **Finalizing Agreement:** Upon reaching agreement during the conference but before the conference concludes, a draft of the settlement terms shall be written by the mediator and signed by the parties and others with settlement authority. Upon reaching agreement, either before or during the conference, the parties and others with settlement authority, shall provide a copy of a formal executed written agreement to the mediator within seven (7) days of the settlement. The mediator shall attach a copy of the formal written agreement to the Report of Mediator filed pursuant to section (f)(2)(D) of these rules. Failure of the parties to provide a copy of the formal written agreement to the mediator on a timely basis may result in sanctions.
- (e) **Sanctions and Failure to Attend:** If any person required to attend the conference pursuant to section (d) of these rules fails to attend without good cause, the judge may impose an appropriate monetary sanction, including but not limited to, the payment of fines, attorneys fees, mediator fees, expenses and losses of earnings incurred by persons attending the conference.
- A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and on any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so after notice and a hearing, and in a written order making findings of fact and conclusions of law.
- (f) **Authority and Duties of a Mediator:**
- (1) **Authority of a Mediator:**
    - (A) **Control of Conference:** The mediator shall at all times be in control of the conference and the procedures to be followed.
    - (B) **Private Consultation:** The mediator may meet and consult privately with any participant or counsel during the conference.
    - (C) **Scheduling of the Conference:** The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select

the date for the conference.

(2) **Duties of Mediator**

- (A) **Generally:** The mediator shall define and describe the following to the parties at the beginning of the conference:
- (i) The process of mediation;
  - (ii) The difference between mediation and other forms of conflict resolution;
  - (iii) The costs of the mediated settlement conference;
  - (iv) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach a settlement;
  - (v) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
  - (vi) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
  - (vii) The inadmissibility of conduct and settlements as provided by applicable Rules of Evidence;
  - (viii) The duties and responsibilities of the mediator and the participants; and
  - (ix) The fact that any agreement reached will be reached by mutual consent.
- (B) **Disclosure:** The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality.
- (C) **Declaring Impasse:** It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
- (D) **Reporting Results of Conference:** The mediator shall submit a Report of Mediator to the judge which indicates the results of the conference. This report shall be filed within 2 weeks of the conclusion of the conference or upon the receipt of a copy of a written settlement agreement, whichever comes first.
- If an agreement was reached, the report shall state whether the action will be concluded by consent judgement or voluntary dismissal and shall identify the persons designated to file the consent judgement or dismissal. The mediator's report shall inform the court of the absence of any party, attorney, or insurance representative who was absent without permission from the conference.
- The mediator shall attach the written settlement agreement prepared by the parties to the Report of Mediator.
- (E) **Scheduling and Holding the Conference:** It is the duty of the mediator to schedule the conference and to conduct and conclude the conference prior to the conference completion deadline set out in the court's order. Deadlines for completion of the conference shall be strictly observed by the mediator unless the time limit is changed by a written order of the judge.
- (3) **Failure of mediator to comply with section (f):** The judge may withhold future appointments of any mediator who does not fully comply with the requirement of section (f).

(g) **Compensation of the Mediator**

- (1) **By Agreement:** when the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

- (2) **By Court Order:** When the mediator is appointed by the court, the mediator shall be compensated by the parties at an hourly rate set by the judge.
  - (3) **Payment of Compensation by Parties:** Unless otherwise agreed to by the parties or ordered by the court, costs of the mediated settlement conference shall be paid in equal shares by the parties. Multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the costs shall pay them equally unless the court otherwise orders.
  - (4) **Sanctions for Failure to Pay mediator's Fee:** Except when excused by these rules or by order of the court, failure of a party to make a timely payment of the party's share of a mediator's fee at the conclusion of the conference may result in the imposition of sanctions.
- (h) **Communications with the Court:** All communications concerning mediated settlement conferences should be addressed to the Bankruptcy Administrator.

### **LOCAL RULE 9022-1**

#### Title: JUDGMENTS & ORDERS - NOTICE OF

Unless otherwise directed by the Bankruptcy Court, the Bankruptcy Clerks Office serves Orders. To facilitate this service the preparer of each Order shall provide the following:

- (a) For Orders submitted in paper format
  - (1) a certificate of service to be signed by the Bankruptcy Clerks Office,
  - (2) pre-addressed, stamped (or metered) envelopes for every party (except for Bankruptcy Administrator and Chapter 13 Standing Trustees) listed on the certificate of service, and
  - (3) sufficient copies of the Order for service by the Bankruptcy Clerks Office upon the parties listed on the certificate of service.
- (b) For Orders submitted electronically via the ECF System
  - (1) a list of parties to be served shall be included with the proposed order in the format specified by the Administrative Guide.