

**LOCAL
BANKRUPTCY
RULES**

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

These rules are current as of July 1, 2014

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LOCAL RULE 1002-1

Title: PETITION - GENERAL

(a) **The Petition Will Be Dismissed Without a Hearing If:**

- (1) The petition is not signed by the debtor(s);
- (2) The party filing the petition neither pays the prescribed filing fee with the petition nor files with the petition an application to pay the required filing fee in installments or an application to proceed in forma pauperis, if eligible to do so;
- (3) The debtor does not file the master mailing matrix with the petition;
- (4) A chapter 11 debtor does not file the list of 20 largest unsecured creditors with the petition; or
- (5) The petition is submitted by a person who under an order of the court may not be a debtor at the time of the submission of the petition.

(b) **Petition pursuant to a Power of Attorney**

- (1) When a petition is signed on behalf of the debtor by a person pursuant to a power of attorney the following is required:
 - (A) The power of attorney must be:
 - (i) A general power of attorney authorizing the attorney-in-fact to take action which the debtor could take; or
 - (ii) A special power of attorney specifically authorizing the attorney-in-fact to file the petition;
 - (B) The power of attorney must be valid under applicable non-bankruptcy law; and
 - (C) A copy of the power of attorney must be filed with the petition.

LOCAL RULE 1004-1

Title: PETITION - PARTNERSHIP

Evidence of General Partners' Consent

Within 14 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 clerk's office.

See also Federal Rule of Bankruptcy Procedure 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 11 U.S.C. §341 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 unless an order has been entered allowing the debtor to proceed in forma pauperis.

LOCAL RULE 1007-1

Title: LISTS, SCHEDULES & STATEMENTS

(a) **Corporate Resolution**

Within 14 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, 12 and 13 petitions must be accompanied by an alphabetized matrix containing the names and addresses of all parties-in-interest, including the creditors, appropriate governmental agencies, and the taxing authority for each parcel of real estate in which the debtor holds an interest.

(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.

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 required by Local Rule 9004-1(b). **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.

Refer to the Bankruptcy Court Fee Schedule or contact the clerk's office to determine the amount of fee due for amending the schedule of creditors.

LOCAL RULE 1015-1

Title: JOINT ADMINISTRATION/CONSOLIDATION

The estates of spouses filing a joint petition will be deemed consolidated for administrative purposes under 11 U.S.C. §302(b) unless otherwise ordered on the motion of a party in interest made within 30 days after the conclusion of the meeting of creditors held under 11 U.S.C. §341.

LOCAL RULE 1019-1

Title: CONVERSION/DISMISSAL - PROCEDURE FOLLOWING

(a) Disposition of Funds by Chapter 12 Trustee upon Conversion of Case

- (1) Upon the conversion of a case under chapter 12 of the Bankruptcy Code, the trustee will disburse funds in the following manner:
 - (A) If there is a confirmed plan in the case, the trustee will disburse any funds received before the conversion of the case pursuant to the terms of the plan. All funds received thereafter shall be disbursed to the debtor.
 - (B) Unless otherwise ordered by the Court, if there is neither a confirmed plan nor an order directing otherwise, the trustee, after paying the balance of any noticing fees, will disburse any remaining funds to the debtor without regard to when the funds were received.
- (2) Notwithstanding paragraphs (A) and (B), if there is a conversion and the trustee is holding funds from the liquidation of any asset, the trustee will disburse such funds to any subsequent trustee after payment of any balance remaining due on the filing fee.

(b) Disposition of Funds by Chapter 13 Trustee upon Conversion of Case

- (1) Upon the conversion of a case under chapter 13 of the Bankruptcy Code, the trustee will disburse funds in the following manner:
 - (A) If there is a confirmed plan in the case, the trustee will disburse any funds received before the conversion of the case pursuant to the terms of the plan. All funds received thereafter shall be disbursed to the debtor.
 - (B) Unless otherwise ordered by the Court, if there is neither a confirmed plan nor an order directing otherwise, the trustee, after paying the balance of any noticing fees, will disburse any remaining funds to the debtor without regard to when the funds were received.
- (2) Notwithstanding paragraphs (A) and (B), if there is a conversion and the conversion is determined to be in bad faith, the trustee will disburse funds on hand in the case at the time of the conversion to the subsequent trustee after payment of any balance remaining due on the filing fee.

(c) **Disposition of Funds by Chapter 12 or Chapter 13 Trustee upon Dismissal of Case**

- (1) Upon the dismissal of a case under chapter 12 or chapter 13 of the Bankruptcy Code, the trustee will disburse funds in the following manner, unless otherwise ordered by the court:
- (A) If there is a confirmed plan in the case, the trustee will disburse any funds received before the dismissal of the case pursuant to the terms of the plan. All funds received thereafter shall be disbursed to the debtor.
 - (B) If there is neither a confirmed plan nor an order directing otherwise, the trustee, after paying the balance of any noticing fees, will disburse any remaining funds to the debtor without regard to when the funds were received.

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 for objection shall be not less than 10 days, unless Rule 2002 of the Federal Rules of Bankruptcy Procedure, other Bankruptcy Rule, or the court, for cause, otherwise provides.

LOCAL RULE 2004-1

Title: DEPOSITIONS & EXAMINATIONS

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

Motions for examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure 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 Procedure.

(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 court.

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 Rule 5005 of the Federal Rules of Bankruptcy Procedure within the time prescribed by 11 U.S.C. §1104(b). Pending approval of the person elected, a person appointed trustee under 11 U.S.C. §1104(d) shall serve as trustee.

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

An election of a trustee under 11 U.S.C. §1104(b) shall be conducted in the manner provided in Rules 2003(b)(3) and 2006 of the Federal Rules of Bankruptcy Procedure. Notice of the meeting of creditors convened under 11 U.S.C. §1104(b) shall be given in the manner and within the time provided for notices under Rule 2002(a) of the Federal Rules of Bankruptcy Procedure. A proxy for the purposes of voting in the election may be solicited by a committee appointed under 11 U.S.C. §1102 and by any other party entitled to solicit a proxy under Rule 2006 of the Federal Rules of Bankruptcy Procedure.

(c) **Resolution of Disputes**

If it is necessary to resolve a dispute regarding the election, the bankruptcy administrator shall promptly file a report informing the court of the dispute. If no motion for the resolution of the dispute is filed within 14 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 11 U.S.C. §327 may file a motion to allow the filing of quarterly statements for interim allowance. Unless the 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 court order, any late filed statements shall be processed in the succeeding quarter.

LOCAL RULE 2072-1

Title: NOTICE TO OTHER COURTS

Notice to Other Courts with Pending Actions

The debtor or other party filing a bankruptcy case must promptly send notice of the bankruptcy filing to the following persons:

- (a) The clerk of any court where the debtor is a party to a pending civil action;
- (b) All parties of record to any pending civil action and to which the debtor is also a party unless (I) the debtor files a statement with the court, identifying the other parties and describing the details of the pending action, and certifies that the interests of the other parties to whom the debtor has not sent the required notice will not be affected by the filing of the bankruptcy case; and (ii) the court shall not otherwise determine that such notice should be sent;
- (c) if a pending civil action in which the debtor is a party has been referred to a designated judge, such judge; and
- (d) if debtor is a party to an arbitration, to the arbitrator or arbitration panel, as applicable.

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, 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) 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 and the movant requesting to appear pro hac vice files a written motion containing the following:

- (i) The movant's name, residence, office address and telephone number, and state bar number;
 - (ii) The courts to which the movant has been admitted to practice and the respective dates of admission;
 - (iii) A statement by the movant of the good standing to practice before the courts to which the movant has been admitted;
 - (iv) 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;
 - (v) 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;
 - (vi) A statement certifying that the movant has read and is familiar with the Local Rules, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence;
 - (vii) A statement that the attorney submits to the disciplinary jurisdiction of the Bankruptcy Court for any misconduct in connection with the matters for which the attorney is specially appearing; or
- (B) such attorney appears with a local counsel admitted to the bar of the United States District Court for the Middle District of North Carolina.
- (2) Any attorney seeking to be admitted to practice pursuant to the provisions of section (b)(1)(A) 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."
- (3) Any member of the bar of the United States District Court for the Middle District of North Carolina who accepts employment in association with an attorney appearing specially pursuant to section (b)(1)(B) of this Rule is responsible to this court for the conduct of the litigation or proceeding and must sign all pleadings and papers, except for certificates of service. Such member must be present during pre-trial conferences, evidentiary hearings, dispositive proceedings, and trial.

(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 until the case is closed or the attorney is relieved from representation upon motion and court order. An attorney who represents a debtor shall perform the following services in each case:

- (1) Analysis of the financial situation, and rendering advice and assistance to the debtor in determining whether to file a petition under Title 11 of the United States Code;
- (2) Preparation and filing of the petition, schedules and statement of affairs and other documents required by the court, including any amendments to the schedules;
- (3) Representation of the debtor at the meeting of creditors;
- (4) To the extent reasonable and necessary, representation in core matters before the court, including motions to avoid non-purchase money security interests and judicial liens, reaffirmation agreements, redemption actions, motions for relief from the automatic stay and all contested matters.

Unless additionally retained by the debtor, the attorney for the debtor is not required to represent the debtor in adversary proceedings in chapter 7 cases.

(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 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 Local 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 Local 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) **Electronic Filing of Proofs of Claim and Transfers of Claims**

In all cases, proofs of claim shall be filed electronically with the clerk according to the procedures established and published from time to time by the clerk. Those procedures are available from the clerk's office and are maintained on the court's website at: www.ncmb.uscourts.gov.

(b) **Procedures for Electronic Filing of Proofs of Claim**

- (1) When filing proofs of claim, the claimant shall comply with the requirements of Bankruptcy Rule 3001(c) and (d) regarding the attachment of documentation in electronic format sufficient to establish the validity and status of the claim.
- (2) The filing of a proof electronically with the clerk shall constitute the filing claimant's approved signature by law and the provisions of 18 U.S.C. §152 shall apply to such filing.
- (3) The filing of a proof of claim electronically in accordance with the clerk's procedures shall constitute entry of the proof of claim in the claims register maintained by the clerk pursuant to Bankruptcy Rule 5003.

(c) **Procedures for Electronic Filing of Transfers of Claims**

- (1) The filing of a transfer of claim electronically with the clerk shall constitute the filing claimant's approved signature by law and the provisions of 18 U.S.C. §152 shall apply to such filing.
- (2) The filing of a transfer of claim shall require the attachment of Official Bankruptcy Form B210 properly completed by the filing claimant. Supporting documentation may be attached within the same filing.
- (3) The filing of a transfer of claim electronically in accordance with the clerk's procedures shall constitute entry of the transfer of claim pursuant to Bankruptcy Rule 5003.

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 90 days after the date first set for the meeting of creditors called pursuant to 11 U.S.C. §341(a), except as otherwise specified by order of the 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 14 days after filing the schedules, or within 14 days after the addition of such creditor to the schedules. Within 3 business days after service has been made, the debtor shall file a certificate of service with the clerk's 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 3007-1

Title: CLAIMS - OBJECTIONS

Any claimant filing a proof of claim shall be deemed to authorize service of any objection to claim by the mailing of a copy of the objection to claim to the claimant at the address set forth in the "Name and address where notices should be sent:" section of the proof of claim.

LOCAL RULE 3018-1

Title: BALLOTS - VOTING ON PLANS

Unless otherwise ordered, all original ballots shall be filed with the clerk's office by the voting parties. Any proponent of a plan shall file a summary of ballots as they appear in the Bankruptcy record. The summary shall be filed with the clerk's office not later than 3 business days prior to the hearing on confirmation unless otherwise set by the 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 11 U.S.C. §554 shall have the effect of lifting the automatic stay (of 11 U.S.C. §362(a)) with respect to the property abandoned.

(b) **Secured Creditor Inquiry with Chapter 13 Debtor or Co-debtor**

In chapter 13 cases after confirmation, affected allowed secured creditors may inquire of the debtor or the co-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 or co-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) **Payment History**

Where a ground presented by a motion for relief from stay includes the debtor's failure to make payments that became due after the filing of the bankruptcy case, the moving party shall include with the motion a reasonably understandable post-petition account history.

LOCAL RULE 4003-1

Title: EXEMPTIONS

Each debtor who is an individual and is claiming exempt property pursuant to the laws of the State of North Carolina and 11 U.S.C. §522(b)(1) and (3) shall claim such exemptions on Local Form #91-C, which form is available from the clerk's office; the debtor's filing of Local Form #91-C must be referenced in Schedule 'C' of the debtor's schedules. Each debtor who is an individual and is claiming exempt property pursuant to 11 U.S.C. §522(b)(2) or pursuant to 11 U.S.C. §522(b)(1) and (3) under a state's laws other than the laws of the State of North Carolina shall claim such exemptions on Schedule 'C.'

LOCAL RULE 5005-1

Title: FILING PAPERS - REQUIREMENTS

(a) **Filing of Papers with the Clerk's 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 clerk's office, and not to the Bankruptcy Judge.

LOCAL RULE 5005-4

Title: ELECTRONIC CASE FILING

Local Rule 5005-4 shall be read in conjunction with the Administrative Guide for Electronic Filing. The guide is available from the clerk's office and is maintained on the court's web site at: www.ncmb.uscourts.gov. In the event of a conflict between the Local Rules and the Administrative Guide, the Local Rules shall control.

LOCAL RULE 5005-4(1)

Title: ASSIGNMENT TO ECF SYSTEM AND FILING REQUIREMENTS

(a) **Assignment**

All opened cases and proceedings 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 or proceeding must be electronically filed via the internet except as provided in these Local 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 clerk's office pursuant to Local Rule 5005-4(2)(d), in order to file documents electronically.

(c) **Exception to Filing Requirement**

Notwithstanding the foregoing, attorneys and others who are not Filing Users are not required to electronically file pleadings and other documents in cases or proceedings 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 Bankruptcy Court (including those admitted pro hac vice), bankruptcy administrators and their assistants, trustees, and others as the court deems appropriate, may register as Filing Users in the ECF System. Registration is in the form prescribed by and available from the clerk's office. The registration form also is contained in the Administrative Guide for the ECF System maintained by the clerk's office and published on the court's web site.

(b) **Non-represented Parties**

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

(c) **Consent to Electronic Service**

Registration as a Filing User constitutes consent to electronic service of all pleadings and other documents properly filed in a case or proceeding, except for those pleadings and other documents required to be served in the manner provided under Rules 7004(a)-(d) and 9016 of the Federal Rules of Bankruptcy Procedure.

(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's office if they learn that their login information or password has been compromised. Filing 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 clerk's 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 ECF System by a Filing User consistent with these Local 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 these Local Rules, 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 User 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 Local 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 or other court issued document 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 or proceeding 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's office.

LOCAL RULE 5005-4(7)

Title: ORIGINAL SIGNATURES AND RETENTION REQUIREMENTS

- (a) A Filing User must obtain original signatures prior to filing on all electronically filed documents that require original signatures from any person other than the Filing User (e.g. petitions, lists, schedules, statements, amendments, affidavits, verifications, and other documents that require verification under Rule 1008 of the Federal Rules of Bankruptcy Procedure or an unsworn declaration as provided in 28 U.S.C. §1746), which documents 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 court's request, the Filing User must provide the original signed documents for review.
- (b) Except as provided above when original signatures are required on a document, a Filing User may electronically file documents (including the submission of proposed consent orders) signed by persons other than the Filing User without obtaining the original signature of such persons on the document, provided that the Filing User first has confirmed that the content of the document is acceptable to all persons required to sign the document and has obtained in writing proof that the document has been signed, or that each signature is authorized, by all persons (e.g., a faxed signature, scanned signature, or e-mail authorized signature). The Filing User shall retain the writing evidencing or authorizing each signature on the document for four years after the closing of the case or proceeding in which the document was filed. Upon the court's request, the Filing User must provide the writing evidencing or authorizing the signature on the document for review.

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, these Local Rules, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the login and password to electronically file any document also shall constitute certification by the Filing User that: (1) all persons required to sign the document have either signed the document or authorized their signing of the document prior to electronic filing pursuant to Local Rule 5005-4(7); and (2) the Filing User has authorized the electronic filing of the executed document.

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

No Filing User may knowingly permit or cause to permit a Filing User's login and password to be used by anyone other than the Filing User and his or her authorized agents.

(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 ELECTRONICALLY FILED DOCUMENTS

All pleadings and other documents properly filed electronically in a case or proceeding by a Filing User in accordance with these Local Rules and the Administrative Guide shall be deemed served on all other Filing Users who have made an appearance in the case pursuant to Rules 2002 or otherwise for purposes of service under Rule 9022 of the Federal Rules of Bankruptcy Procedure, Rule 5(b) of the Federal Rules of Civil Procedure, or otherwise, except for those pleadings and documents required to be served in the manner provided under Rules 7004(a)-(d) and 9016 of the Federal Rules of Bankruptcy Procedure. As to all pleadings and documents required to be served pursuant to Rules 7004(a)-(d) or 9016 of the Federal Rules of Bankruptcy Procedure, service must be accomplished as required under the applicable rule.

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 or the clerk in a case or proceeding assigned to the ECF System, the clerk will electronically transmit a Notice of Electronic Filing to all Filing Users in the case or proceeding. 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 all Filing Users in the case or proceeding.

(b) **Notice and Service to Other Parties**

The clerk shall give conventional notice and service of documents in accordance with the Federal Rules of Bankruptcy Procedure to any person who is not a Filing User in the case or proceeding.

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 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 Rule 5011 of the Federal Rules of Bankruptcy Procedure

(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 14 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 14 days after being served with a copy of the motion. The moving party may serve and file a reply within 14 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:

- (a) Corporate debtor filing a petition in a voluntary case;
- (b) Petitioning corporate creditor in any involuntary case;
- (c) Corporate party serving on a creditors' committee;
- (d) Corporate party to any adversary proceeding; and
- (e) 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 14 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

- (a) No continuance of hearing or trial (whether stipulated to by counsel or not) shall be effective unless (1) the court announces it in open court, (2) the court approves it by written order or (3) the courtroom deputy informs the parties that the court has authorized the requested continuance;
- (b) Requests for continuances of chapter 12 and chapter 13 creditors' meetings shall be made to the appropriate chapter 12 or chapter 13 standing trustee's office; requests for continuances of all other creditors' meetings shall be made to the bankruptcy administrator'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 court permission.

LOCAL RULE 7007-1

Title: MOTION PRACTICE (IN ADVERSARY PROCEEDINGS)

(a) **General Requirements**

In addition to complying with the requirements of the Federal Rules of Bankruptcy Procedure, all motions in adversary proceedings shall state with particularity the facts supporting the motion and shall state the relief requested.

(b) **Response to Motion**

Any party in interest may file a written response to any motion within 14 days after service of the motion unless otherwise ordered or provided in the Federal Rules of Bankruptcy Procedure or these Local Rules. The response may be a memorandum and may be accompanied by affidavits and other supporting documents. In the event that no response is timely filed, the court may proceed in its discretion to rule on the motion without further notice or opportunity to be heard.

(c) **Memorandum of Law**

Unless otherwise provided by these Local Rules or ordered by the court, all briefs or memoranda of law either in support of the motion or in opposition thereto are optional and are not required, and shall be filed with the clerk at least 3 business days prior to any hearing that may be scheduled on the motion. If a brief or memorandum of law is filed, the filing party or the attorney for that party shall inform the judge's chambers of the filing if that party or attorney has filed the brief or memorandum directly on the court's CM/ECF system; and if the filing party or the attorney for that party has not filed the brief or memorandum on the court's CM/ECF system, then a working copy must either be e-mailed, faxed, or physically delivered to the chambers of the judge assigned to the matter.

(d) **Decided on Motion Papers and Briefs**

All motions in adversary proceedings shall be considered and decided by the court on the pleadings, admissible evidence in the record, and motion papers and briefs, without hearing or oral argument, unless otherwise ordered by the court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the court's attention in the motion or response.

LOCAL RULE 7055-1

Title: DEFAULT - FAILURE TO PROSECUTE

(a) **Clerk's Notice**

If, upon the expiration of 6 months after the filing of the last pleading, it appears to the clerk that no significant activity has since occurred in an adversary proceeding or contested matter in which there is no scheduled hearing, the clerk will send written notice to all parties to the adversary proceeding or contested matter that the proceeding or matter will be denied or dismissed without prejudice unless, within 30 days after the date of the notice, the plaintiff or movant presents good and sufficient cause in writing why the dismissal or denial should not be ordered.

(b) **Court Action**

If there is no response to the clerk's notice, an order of dismissal or denial without prejudice may be entered.

LOCAL RULE 7056-1

Title: SUMMARY JUDGMENT

(a) **Time for Filing of Motion**

Motions for summary judgment shall be filed within the time deadlines set forth in the pre-trial order and shall comply with Rule 56 of the Federal Rules of Civil Procedure.

(b) **Supporting Brief or Memorandum of Law**

Each motion for summary judgment shall be accompanied by a brief or memorandum of law in support of the motion. The supporting brief or memorandum of law shall begin with a concise statement of uncontroverted material facts. Each fact shall be set forth in a separately numbered paragraph. Each fact shall be supported by reference to the place in the record where the fact is established.

(c) **Opposing Brief or Memorandum of Law**

A response and brief or memorandum of law in opposition to a motion for summary judgment shall be filed within 21 days of the filing of the motion for summary judgment. The opposing brief or

memorandum of law shall begin with a section that contains a concise listing of material facts as to which the opposing party contends a genuine issue of material fact exists. Each material fact in dispute shall be set forth in a separate paragraph, shall refer specifically to those portions of the record upon which the opposing party relies, and, if applicable, shall state the paragraph number in the movant's listing of facts that is disputed. All facts set forth in the statement of the movant shall be deemed admitted for the purpose of the motion for summary judgment unless specifically controverted by the opposing party.

(d) **Reply Brief or Memorandum of Law**

A reply brief or memorandum of law may be filed within 14 days after service of the opposing brief or memorandum of law.

(e) **Facts**

All facts on which a motion or opposition is based shall be presented in accordance with Rule 56 of the Federal Rules of Civil Procedure. Where facts to which a party refers are contained in another document, such as a deposition, interrogatory answer, or admission, a copy of the relevant excerpt from the document shall be attached.

(f) **Limitations on Length of Briefs and Memorandum of Law**

Each brief or memorandum of law in support of a motion for summary judgment, or in opposition thereto, is limited in length to 20 pages, and a reply brief or memorandum of law is limited in length to 10 pages. The page limitations may be exceeded only by leave of the court.

(g) **Failure to File and Serve Brief or Response**

The failure to file a brief in support of a motion for summary judgment or response thereto within the time specified in this Local Rule shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion for summary judgment unaccompanied by a required brief or memorandum of law may, in the discretion of the court, be summarily denied. A response unaccompanied by a required brief may, in the discretion of the court, be disregarded and the pending motion may be considered and decided as an uncontested motion. If a respondent fails to file a response within the time required by this Local Rule, the motion may be considered and decided as an uncontested motion.

LOCAL RULE 9004-1

Title: PAPERS - REQUIREMENTS OF FORM

(a) Captions

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

(b) Form of Certificates of Service

Whenever the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or these Local Rules require proof of service, the proof of service shall include the following information:

- (1) to whom such service was addressed
- (2) the specific address to which such service was sent, if service was made other than electronically through the ECF system; and
- (3) the method of delivery by which such service was effectuated.

LOCAL RULE 9006-1

Title: TIME PERIODS

(a) **Motions for the Shortening of Notice**

A motion to shorten notice must be made by separate written motion, which states with specificity the reasons that shortening notice is necessary, identifies the parties affected by the motion, and describes the service of notice of the request on interested parties.

(b) **Service of Motion and Order**

Immediately upon filing of the motion to shorten notice, the movant shall serve a copy of the motion by hand delivery, overnight delivery, facsimile, or electronic transmission. Immediately upon receipt of the order shortening time and setting the hearing, the movant shall serve notice of the hearing in a similar manner. In instances where service of the notice of hearing may not provide sufficient time for parties in interest to respond or appear, counsel for the moving party shall telephonically provide notice of the hearing as soon as practicable.

(c) **Objection to Timing of Hearing on Shortened Notice**

If, at or prior to the hearing held on shortened notice, any opposing party objects to the shortened notice, the moving party shall have the burden of demonstrating good cause for the shortened notice or the court shall grant a continuance.

(d) **Business Day**

Whenever the term “business day” is used herein, it shall refer to any day that is not a Saturday, Sunday or “legal holiday,” as that term is defined by Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

LOCAL RULE 9007-1

Title: GENERAL NOTICE AND SERVICE PROVISIONS

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

The 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 these Local Rules.

(b) **Service Required on Trustee**

In cases where a trustee has been appointed, any and all pleadings (except claims) in all matters and proceedings arising in or related to the case shall be served on the trustee whether or not such trustee is a party to the proceeding.

(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’s office, 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.

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 court must be represented by an attorney duly admitted to practice before the 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 11 U.S.C. §341;
- (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 Rules of Bankruptcy Procedure 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 by such attorney with the clerk's office.

(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) **Motions Covered**

For the purposes of this Local Rule, a “motion” filed in a case shall include any motion, application, notice, any other request for relief from the court, or any proposed action to be taken under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or Local Rules. The definition of “motion” shall not include a petition for relief under the Bankruptcy Code, a proof of claim or an objection to a proof of claim, or any proposed order submitted to the court. Any letter that is received by the court need not be considered as a motion.

(b) **Form of Motion**

All motions, unless made in open court during a hearing or at trial, shall be in writing and filed with the clerk. All motions shall state with particularity the grounds for the relief requested in separately numbered paragraphs and shall be signed by the movant or the movant’s counsel. Multiple requests for relief in a single motion will be allowed for filing purposes if those requests are based on 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. Authorities and arguments may be briefed in a motion. If time does not permit the filing of a written motion, the court, in its discretion, may waive the requirement. A motion will not be accepted by telephone or facsimile without the consent of the court.

(c) **Supporting Documentation**

Unless otherwise provided in these Local Rules, when allegations of facts on which a motion relies do not appear in the record, the source for those allegations of fact shall be summarized and this summary shall be submitted with, or as part of, the motion. If the motion is based on affidavits and documents evidencing facts that are not contained in the record, the affidavits and documents must be filed with the motion, unless they are unavailable at the time that the motion is filed. If the affidavits and documents are not then available, then the moving party may move for an extension of time for filing affidavits and documents in accordance with section (g) of this rule. In addition to the other requirements of these Local Rules, any motion for relief from stay, abandonment, sale of property, or other relief with respect to property, shall have attached thereto copies of all documents evidencing the related indebtedness and perfected lien status, unless such documents have already been filed in connection with another motion in the case, in which case a specific reference should be made to the motion to which such copies are attached.

(d) **Service**

In addition to the parties affected by the motion, all motions in all proceedings and cases shall be served on the trustee whether or not the trustee is a party to the proceeding. In all cases, the attorney for the debtor must be served in like manner. In chapter 7, 11, and 12 cases, all motions shall be served on the bankruptcy administrator.

(e) **Response; Time for Response**

Any party against whom relief is sought may file a written response to the motion. The response may be accompanied by affidavits and other supporting documents. A response and accompanying affidavits, if any, to a motion shall be served within the earlier of 14 days from the date of the service of the motion, or 3 business days from the date of the hearing on the motion, unless otherwise ordered or provided in the Federal Rules of Bankruptcy Procedure or these Local Rules.

(f) **Content of Response**

All responses shall contain sufficient information to reasonably disclose the basis for the party's position and what specific issues are contested. If a response is not in compliance with this provision, the court in its discretion may resolve the matter without a hearing.

(g) **Extension of Time for Filing Supporting Affidavits and Documents**

Upon proper motion accompanied by a proposed order, the court may enter an ex parte order specifying the time within which supporting affidavits and documents may be filed pursuant to section (c), if it is shown in writing that such affidavits or documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response shall not run during any such extension.

(h) **Memorandum of Law**

Unless otherwise ordered by the court, all briefs or memoranda of law either in support of the motion or in opposition thereto are optional and are not required, and shall be filed with the clerk at least 3 business days prior to the hearing on the motion. If a brief or memorandum of law is filed, the filing party or the attorney for that party shall inform the judge's chambers of the filing if that party or attorney has filed the brief or memorandum directly on the court's CM/ECF system; and if the filing party or the attorney for that party has not filed the brief or memorandum on the court's CM/ECF system, then a working copy must either be e-mailed, faxed, or physically delivered to the chambers of the judge assigned to the matter.

(i) **Hearing on Motion**

The clerk shall set all hearing dates.

(j) **Disclosure Requirements Inapplicable**

The disclosure requirements imposed by Rule 7026(a) of the Federal Rules of Bankruptcy Procedure are inapplicable to contested matters, unless otherwise ordered by the court.

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 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) of the Federal Rules of Civil Procedure, insofar as they apply to jury trials, apply to cases and adversary proceedings except that a demand made under Rule 38(b) of the Federal Rules of Civil Procedure shall be filed in accordance with Rule 5005 of the Federal Rules of Bankruptcy Procedure.

(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 Bankruptcy 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 14 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 14 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 14 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 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 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 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 21 days of the court's order, the judge shall appoint a mediator certified pursuant to these Local 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's office.
- (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 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 Local 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 14 days 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 9027-1

Title: STATEMENT IN NOTICE OF REMOVAL REGARDING CONSENT TO ENTRY OF ORDERS OR JUDGMENT IN CORE PROCEEDING

If, pursuant to Rule 9027(a)(1) of the Federal Rules of Bankruptcy Procedure, a notice of removal states that upon removal of the claim or cause of action the proceeding or any part of it is core, the notice shall also state that the party removing the proceeding does or does not consent to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

LOCAL RULE 9027-2

Title: STATEMENT REGARDING CONSENT TO ENTRY OF ORDERS OR JUDGMENT IN CORE PROCEEDING

If a statement filed pursuant to Rule 9027(e)(3) of the Federal Rules of Bankruptcy Procedure by a party who filed a pleading in connection with a removed claim or cause of action, other than the party filing the notice of removal, states that the proceeding or any part of it is core, the party shall also state that the party does or does not consent to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

LOCAL RULE 9033-1

Title: PROPOSED FINDINGS AND CONCLUSIONS IN CERTAIN CORE PROCEEDINGS

If the Court determines that it cannot enter a final order or judgment consistent with Article III of the United States Constitution in a particular proceeding referred to the Court and designated as core under section 157(b) of title 28, and the Court hears the proceeding, Rule 9033(a), (b), and (c) of the Federal Rules of Bankruptcy Procedure shall apply as if it is a non-core proceeding.