

**LOCAL RULES OF BANKRUPTCY PROCEDURE
FOR THE DISTRICT OF ARIZONA**

As Revised Through December 1, 2017

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Rule 1000-1. Prohibition of Bias

Litigation, inside and outside the courtroom, in the United States District Court for the District of Arizona, including the bankruptcy court, must be free from prejudice and bias in any form. Fair and equal treatment must be accorded all courtroom participants, whether judges, attorneys, witnesses, litigants, jurors, or court personnel. The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another on the basis of categories such as gender, race, ethnicity, religion, disability, age, or sexual orientation.

Rule 1001-1. General Scope

The Local Rules supplement or, if permitted, modify the Federal Rules of Bankruptcy Procedure, as amended. They shall be construed to be consistent with such Rules to promote speedy and inexpensive litigation. The definition of words and phrases in the Code and the Rules govern their use in the Local Rules.

Rule 1005-1. Caption and Form of Papers

(a) Caption. The caption of any document filed shall designate the court as the United States Bankruptcy Court for the District of Arizona.

(b) Case Number. The case number on any document filed shall include:

- (1)** the division number for the division within the district in which the case was filed (0 = Yuma; 2 = Phoenix; and 4 = Tucson);
- (2)** the last two digits of the calendar year in which the case is filed;
- (3)** the letter designation of the type of case that is being filed, e.g., bk = bankruptcy proceeding; ap = adversary proceeding, etc.;
- (4)** the number of the case assigned when the case was filed;
- (5)** the initials of the Judge to whom the case is assigned.

(c) Case Chapter. Each document filed shall designate the chapter of the case in the caption.

Committee Notes 2007: The changes above were made to conform to the case numbering and caption provisions that are applicable to bankruptcy matters as a result of the adoption of the ECF electronic filing system.

Rule 1005-2. Petition

(a) Completeness. The petitioner must complete each section by answering all questions and marking all applicable boxes. On page two, if the debtor filed no prior bankruptcy cases, the Petition must state “None.” The petitioner’s attorney must include an e-mail address and, if the petitioner has an e-mail address, the petitioner must put the e-mail address below the signature.

(b) Doing Business. A caption for an individual petition or joint petition by a husband or wife shall include any sole proprietorships. Corporations, partnerships, or similar entities shall not be joined in one petition or in an individual’s petition. Only individuals may file a petition under or convert a case to chapter 13.

(c) Involuntary. An involuntary joint petition against a husband and wife shall not be filed. Two separate involuntary petitions must be filed.

Committee Notes 2007: The requirement for petitioner to list an e-mail address is added to facilitate noticing.

Rule 1006-1. Filing Fee

(a) Petition Filing Fee/Installments.

- (1) Paying the Filing Fee in Installments.** Only an individual debtor may file an application and be permitted to pay the filing fee in installments. Corporations, partnerships, limited liability companies, unincorporated associations, trusts and other artificial entities shall pay the filing fee in full at the time the petition is filed.
- (2) Minimum Payment.** If an individual debtor files a petition without payment of the full filing fee and without seeking a fee waiver pursuant to 28 U.S.C. § 1930(f), a minimum payment of \$50.00 must accompany the petition, unless the court otherwise orders. If the debtor is unable to make the initial payment at the time of filing, an order will be entered requiring the debtor to make the initial payment of \$50.00 within 14 days of the entry of the order and providing that the case shall be dismissed without further notice if the payment is not made within the time specified.
- (3) Previous Cases Filed.** If the debtor files a case without payment of the full filing fee when the debtor owes a filing fee from a prior case, an order will be entered requiring the debtor to pay the entire filing fee in full within 14 days of the entry of that order and providing that if said payment is not timely made, the debtor’s case shall be dismissed without further notice.
- (4) Chapter 7, 11, 12 and 13 Individual Voluntary Cases.** Any order granting an application to pay the filing fee in installments shall order the final installments paid prior to 120 days from the date of the filing of the petition or, for cause shown, no longer than 180 days from the date of the filing of the petition.

(5) **Prohibited Payments.** Until the filing fee is paid in full, the debtor shall not make any further payments to a debt relief agency and no person shall accept any property as payment for services in connection with this case.

(6) **Waiver of Chapter 7 Filing Fee.** An order denying an application to waive the chapter 7 filing fee may provide for payment of the filing fee in as many as four installments with the last installment due no longer than 180 days from the date of the filing of the petition.

(b) Adversary Proceeding Filing Fee.

(1) The filing fee required by 28 U.S.C. § 1930(b) shall be paid upon the filing of a complaint or the notice of removal initiating an adversary proceeding.

(2) Failure to pay the filing fee as required in this Rule shall result in dismissal of the adversary proceeding without prejudice.

(c) Miscellaneous Proceeding Filing Fee.

(1) The filing fee required by 28 U.S.C. § 1930(b) shall be paid upon the filing to register a judgment entered by another bankruptcy court or other miscellaneous filing.

(2) Failure to pay the filing fee as required in this Rule shall result in the filing being deemed lodged, not filed, and no further action will be taken on the filing.

(d) Form of Payment.

(1) Except as provided in subsection (2) for attorney electronic filings, all filing fees and other court costs payable to the clerk shall be made in cash, by certified check or money order, or by check drawn on the account of an attorney admitted to practice before this court or a business check of a process server or trustee and shall be made payable to "Clerk, U.S. Bankruptcy Court."

(2) For attorney electronic filings that require a fee, the fee shall be paid by using a credit card or debit card on-line through the ECF Internet filing fee payment process no later than 72 hours from the filing of the document. The credit card or debit card used to pay the filing fee must be that of the attorney or law firm that represents the party; use of a party's credit card or debit card is prohibited. A document, other than a petition, electronically filed that requires a filing fee shall be deemed lodged, and not filed, and no further action shall be taken until the filing fee is paid. Failure to timely pay the filing fee constitutes good cause for the clerk to suspend the filer's ECF password until such time as all outstanding fees are paid.

(3) Any check drawn on the account of an attorney or business check of a process server or trustee that is returned unpaid due to insufficient funds or for any other reason shall incur a fee. The fee shall be paid in cash, by certified check or money order within 48 hours of notification that the check has been returned. Failure to pay the amount due or the second instance of a returned check may result in that attorney, process server, or trustee no longer being able to pay fees by check.

(e) Appellate Filing Fee. The filing fee shall be paid at the time of the filing of the notice of appeal or cross-appeal to the clerk of the bankruptcy court as provided above. The filing fee incurred when the Circuit Court of Appeals accepts a direct appeal from the bankruptcy court shall be paid to the clerk of the bankruptcy court in the manner directed by the clerk.

Committee Notes 2011: Subsection (d)(2) has been amended by General Order 105; the changes are effective January 28, 2011.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: Subsection (c) added to provide for filing fees incurred by filing of miscellaneous filings. Subsection (d)(2) added to incorporate payment of filing fees on-line by the attorney when e-filing a document that incurs a filing fee. Adopted from ECF Operating Order No. 8. Subsection (e) includes a new fee incurred when a direct appeal to the Circuit Court of Appeals is accepted by that court.

Rule 1007-1. Lists, Schedules and Statements

(a) Master Mailing List.

- (1)** A master mailing list shall be filed with the petition in the format specified by the clerk. The clerk may also require that the master mailing list be electronically submitted. Unless otherwise ordered, the master mailing list shall include the names and addresses, including zip codes, of all creditors and equity security holders, in alphabetical order.
- (2)** When an addition or change is made to the master mailing list, the entire master mailing list shall not be filed or electronically submitted. Only a supplemental master mailing list, in the required format, containing only the newly added or changed creditors shall be filed and electronically submitted.
- (3)** If a master mailing list submitted for filing does not comply with the specified requirements, the clerk shall immediately notify the debtor's attorney or debtor, if pro se, of the fact. The debtor shall have seven days from the filing of the petition to file a master mailing list in compliance with the specified requirements. Failure to timely file a properly formatted master mailing list shall be cause for dismissal of the petition without further notice or a hearing.

(b) List of 20 Largest Creditors. In a chapter 9 or chapter 11 case, the list of twenty largest unsecured creditors required to be filed with the petition shall include the creditors' phone and facsimile numbers and e-mail addresses, if known.

(c) Declaration. An original executed declaration containing a verification of the petition, lists, schedules, statement of affairs and debtor's social security number, in the form prescribed by the clerk, shall be filed with the clerk as a separate document. Failure to timely file the signed original declaration within 21 days after the date the petition was filed or, in the event an extension has been granted to file the schedules and statements, no later than seven days after the schedules and statements are filed shall result in dismissal of the case without further notice.

(d) Statement of Social Security Number. If a debtor fails to submit the Statement of Social Security Number required by Bankruptcy Rule 1007(f) with the petition, the debtor shall have seven days from the date of the filing of the petition to submit the statement. Failure to submit the statement within seven days of the filing of the petition shall be cause for dismissal of the petition. In place of submitting a Statement of Social Security Number, the attorney for the debtor may submit the debtor's social security number electronically when opening the case on CM/ECF and include in the Declaration Re: Electronic Filing debtor's declaration that the social security number is true and correct.

(e) Statement that Means Test Does Not Apply. A chapter 7 individual debtor who is not required to file a Statement of Current Monthly Income and Means Test Calculation because his or her debts are not primarily consumer debts shall file a statement to that effect.

(f) Payment Advices. To comply with Code § 521(a)(1)(B)(iv), the debtor shall file a Declaration in the following form and check the appropriate box.

Declaration of Evidence of Employers' Payments Within 60 Days

- Attached hereto are copies of all payment advices, pay stubs or other evidence of payment received by the debtor from any employer within 60 days prior to the filing of the petition;
- Debtor has received no payment advices, pay stubs or other evidence of payment from any employer within 60 days prior to the filing of the petition; or
- Debtor has received the following payments from employers within 60 days prior to the filing of the petition: \$_____.

Debtor declares the foregoing to be true and correct under penalty of perjury.

Dated: _____

Signature of Debtor

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: Changes in Subparagraph (a)(1) and (2) incorporate provisions from the ECF Interim Operating Order No. 8. Subparagraph (a)(4) change from ten to five days incorporates changes by General Order No. 94 due to BAPCPA's requirement that clerk give notice in certain cases within 10 days of the filing of the petition, necessitating that the mailing list be submitted before then. Subparagraph (a)(3) of the old rule was deleted as it is now found in Rule 2090-1. Subparagraph (b) adds requirement for e-mail addresses. Subparagraph (c) is incorporated from ECF Interim Operating Order No. 8. Subparagraph (d), (e) and (f) incorporate changes made in General Order No. 94 and in Interim Rule 1007.

Rule 1009-1. Amendments To Petition, Schedules and Statements

(a) Copies of Amendments. The debtor shall provide a copy of any amendment to the petition, schedules, or statements to the case trustee, the United States trustee and any entity affected thereby.

(b) Supplemental Master Mailing List. If an amendment to the schedules adds one or more creditors, the debtor shall file with the amendment a supplemental master mailing list that lists the names and addresses of those creditors added by the amendment. If the amendment is filed by the attorney for the debtor, the attorney is required to input into CM/ECF the names and addresses of the added creditors in place of filing a supplemental mailing list.

(c) Amendment to Petition.

- (1)** When amending a petition, the debtor must contemporaneously file a separate notice that gives the reason for the amended petition.
- (2)** If the debtor's social security number on the petition is incorrect, the debtor must file an amended Statement of Social Security Number, and notice the amended Statement to all parties in interest and file a certificate of service. If the last four digits of social security number on the petition are incorrect, the debtor must file an amended petition, and notice out the amended petition to all parties in interest and file a certificate of service.

Rule 1015-1. Consolidation or Joint Administration of Cases

(a) Related Cases. Whenever more than one bankruptcy case is filed or pending in which the debtor entities are related or the cases are otherwise related, counsel may file a motion to transfer the assignment of the cases to a single judge. The motion shall specify the reasons for having the related cases heard by one judge. The motion to transfer the assignment shall be filed in the lower numbered case only. It shall identify the other cases to be assigned by case name and number in the body of the motion. The judge assigned the lower numbered case will rule on the motion.

(b) Joint Administration/Substantive Consolidation. A motion for joint administration or for substantive consolidation shall include therein a motion to transfer the assignment of the cases to be jointly administered or substantively consolidated if those cases are not all assigned to one judge.

Rule 1017-1. Dismissal of Case

(a) Notice of Proposed Dismissal. Notice of the proposed dismissal of a case for failure to file in a timely manner the schedules, statements or chapter 11, 12 or 13 plan shall be given in the notice of meeting of creditors to all creditors and other interested parties.

(b) Dismissal Without Further Notice. Failure of the debtor to file in a timely manner the documents required by the Rules or the Local Rules or to appear at the meeting of creditors shall be cause for dismissal of the bankruptcy case without further notice.

(c) Reinstatement. A case dismissed for failure of the debtor to timely file a required document or for failure to appear at the meeting of creditors may be reinstated on motion

of the debtor pursuant to Bankruptcy Rule 9024, provided that all required documents are filed, or on motion of another party. The clerk shall not close a dismissed case until 60 days after the date of dismissal.

(d) Dismissal with Prejudice.

- (1)** Unless otherwise stated in the dismissal order, an order dismissing a bankruptcy case that provides that the dismissal is with prejudice means that the debtor is prohibited from filing another bankruptcy petition for 180 days from the date that the dismissal order is entered upon the docket.
- (2)** If the debtor attempts to file a subsequent bankruptcy petition within the 180 day period, the clerk is directed to accept the petition for filing, to assign the new case to the judge that entered the dismissal order, and to immediately generate and present to the court an appropriate Order to Show Cause as to why the new case should not be dismissed based on the court's prior order. The Order to Show Cause will then be set and treated as an expedited matter.
- (3)** Nothing in this rule prevents the clerk from obeying a specific order entered by a judge of this court. Nor does this rule prohibit a judge from entering such further orders or injunctions as are necessary to prevent an abuse of the bankruptcy process or to prohibit frivolous pleadings and filings, based on the facts of that particular case.

(e) Order for Dismissal.

1. Notwithstanding Code § 521(i)(1), no case shall be deemed dismissed except upon entry of an order of dismissal.

2. If a party moves for dismissal pursuant to Code § 521(i)(2) and if such motion specifically requests dismissal within seven days, the Court may dismiss the case without further notice or hearing if the docket is missing one or more of the six items identified in Code § 521(a)(1)(A) and (a)(1)(B)(i) through (v). If the docket contains a filing denominated as such but which the moving party contends fails to include all the contents required by Code § 521(a)(1) or required by the Bankruptcy Rules, Local Rules or Official Forms, the motion shall identify the alleged deficiency. The movant shall serve the motion on the debtor and the trustee along with a notice requiring a response to be filed within 14 days of service. If no such response is timely filed, the Court may dismiss the case without further notice or hearing. If a response is timely filed, the Court will either rule on it or set it for hearing.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 1071-1. Divisions – Bankruptcy Court

(a) Filing with Clerk. Petitions initiating cases under Title 11 shall be filed with the Clerk of the United States Bankruptcy Court for the District of Arizona.

(b) Phoenix Division. Maricopa, Apache, Navajo, Coconino, Gila and Yavapai county cases should be filed with, and will be maintained by, the clerk's office in the Phoenix Division.

(c) Tucson Division. Pima, Cochise, Santa Cruz, Graham, Pinal and Greenlee county cases should be filed with, and will be maintained by, the clerk's office in the Tucson Division.

(d) Yuma Division. Yuma, La Paz and Mohave county cases should be filed with, and will be maintained by, the clerk's office in the Yuma Division.

Committee Notes 2007: The only change to this rule is to require Gila County cases to be filed in the Phoenix Division rather than the Tucson Division, incorporating that change made by General Order No. 71.

Rule 1072-1. Places of Holding Court

(a) Hearing Sites. Unless otherwise directed by the court, all judicial proceedings in bankruptcy cases will be heard at the following sites:

- (1)** Cases originating from Apache, Gila, Maricopa, or Navajo Counties shall be heard in Phoenix.
- (2)** Cases originating from Cochise, Graham, Greenlee, Pima, Pinal, and Santa Cruz Counties shall be heard in Tucson.
- (3)** Cases originating in Yuma and La Paz Counties shall be heard in Yuma.
- (4)** Cases originating in Coconino, Mohave, and Yavapai Counties shall be heard in Prescott, Flagstaff, or Bullhead City as the court may direct.

(b) Motions for Change of Hearing Site. Any party who wishes to change the hearing site of a particular judicial proceeding or an entire case shall file a motion justifying the change of hearing site with the division of the clerk's office where the matter is pending.

(c) Judicial Discretion on Change of Hearing Site. Notwithstanding the provisions of this Local Rule, the court reserves the right to assign a particular judicial proceeding or case to another site elsewhere in the district.

Committee Notes 2007: The changes provide that Apache, Gila and Navajo County cases shall be heard in Phoenix, incorporating that change made by General Order 71.

Rule 1073-1. Assignment of Cases

(a) New Petitions. Except as may be provided by General Order of the court, new petitions commencing a case shall be assigned by the clerk or designated deputy clerk according to a random draw so that neither the clerk, deputy clerk, nor any parties or their attorneys is able to make a deliberate choice of a particular judge.

(b) Temporary Reassignments. A case assigned to a particular judge may be temporarily reassigned to another judge if the judge to whom the case is assigned is unavailable and an emergency exists that requires prompt action by the court. The case will be temporarily

reassigned by the clerk or designated deputy clerk to an available judge by random draw. The reassignment shall be for the limited purpose of hearing or determining that matter.

(c) Recusal. Upon recusal of the assigned judge of an entire case, an adversary proceeding, contested matter, or other single matter within a case, the recused case, proceeding or matter will be reassigned by the clerk or designated deputy clerk to another judge by random draw.

(d) Miscellaneous Assignments. Whenever action is required on a miscellaneous matter for which there is no bankruptcy case pending in this district, the clerk or designated deputy clerk shall assign the matter by random draw.

(e) Voluntary Judicial Reassignments or Transfers. Notwithstanding this Local Rule, any judge may transfer any bankruptcy case, adversary proceeding, contested or other matter to another judge with such judge's consent. Nothing in this Local Rule precludes one judge from hearing any matter for the judge to whom the bankruptcy case, adversary proceeding, contested or other matter is assigned without the entry of an order of transfer.

(f) Reinstatements. Cases commenced by the reinstatement of a petition after dismissal may be reassigned to the judge to whom the case was previously assigned.

Committee Notes 2007: Changes are purely stylistic except that subparagraph (b) allows for the temporary reassignment to an available judge without use of random draw procedures.

Rule 2002-1. Notices To Creditors

(a) Motions and Applications. It shall be the responsibility and duty of the movant or the applicant, except for the United States Trustee and case trustee, to give the required notice of the hearing set on the motion or application or of the bar date by which an objection is to be filed if a hearing is not required.

(b) Discretion of the Court. Notwithstanding the provisions of this Local Rule, the court may order that a particular party shall be responsible for any or all noticing to creditors.

(c) Forms of Notice. Whenever a motion or application is filed which is required to be noticed or requires a hearing, the movant or applicant shall provide the form of notice.

(d) Service on Certain Interested Parties. In all cases, if any notice is not required to be mailed to all creditors, but instead is required to be served only on certain interested parties, the moving party or applicant shall serve those interested parties.

(e) Preferred Addresses.

(1) An entity and a notice provider, to include the Bankruptcy Noticing Center, may agree that when the notice provider is directed by the Court to give a notice to that entity, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.

- (2) The filing of a notice of preferred address pursuant to 11 U.S.C. § 342(f) by a creditor directly with the agency or agencies that provide noticing services (currently the Bankruptcy Notice Center) for the Bankruptcy Court will constitute the filing of such a notice with the Court.
- (3) Registration with the National Creditor Registration Service must be accomplished through the agency (currently the Bankruptcy Noticing Center) that provides noticing services for the Bankruptcy Court. Forms and registration information is available at <https://ncrs.uscourts.gov/>.

Rule 2003-1. Meeting Of Creditors

(a) Continuance, Consolidation or Change of Location. Any request to continue the meeting of creditors, to consolidate the meetings of creditors in several cases, or to change the location of the meeting of creditors shall be directed to the United States Trustee in chapter 9 or 11 cases or to the case trustee in chapter 7, 12 or 13 cases. If the trustee grants the continuance, the movant shall immediately file a notice of the new date, time, and location, and serve that notice on all creditors and parties in interest on the master mailing list, and file a certificate of service.

(b) Waiver of Appearance. A motion to waive the appearance of a debtor shall be filed with the court and state with particularity the reasons for the waiver and include a statement that the United States Trustee in a chapter 9 or 11 case, or the case trustee in a chapter 7, 12, or 13 case, has been contacted and if the United States Trustee or case trustee has an objection to the waiver. In addition to the motion, the debtor must provide to the United States Trustee in a chapter 9 or 11 case, or the case trustee in a chapter 7, 12 or 13 case, a copy of the debtor's identification documents along with a notarized affidavit attesting to the authenticity of the copied documents and the identity of the debtor. The party filing a motion to waive the appearance of a debtor must serve copies on the case trustee, United States Trustee, and any party that filed a notice of appearance. The case trustee and United States Trustee shall have seven days to respond to the motion. In the event the debtor has moved out of the jurisdiction and cannot attend the meeting of creditors, a waiver will not be granted in those cases where the debtor can appear at the local office of the United States Trustee and make a telephonic appearance.

Related Code Sections and Rules: 11 U.S.C. §§ 341 and 343; Rule 2003.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: Changes to Rule 2003-1 were made to address concerns that adequate notice be provided when § 341 meetings are changed. The chapter 13 trustees, in particular, were interested in these modifications.

Rule 2014-1. Compensation of Professionals on a Fixed or

Contingent Fee Basis Except for real estate agents, brokers, and auctioneers employed on a stated commission basis standard in the industry for the type of property involved, or as otherwise ordered by the court, all professional fees will be subject to review for reasonableness pursuant to Bankruptcy Code § 330(a)(3) unless both the application and order for employment state, expressly and conspicuously, and preferably in the caption and the body of the document, that the fees are to be calculated, in whole or in part, on a fixed or percentage

fee basis, subject to the court's right under Bankruptcy Code § 328(a) to adjust such fees if the terms and conditions of employment prove to have been improvident in light of developments that could not have been anticipated at the time that they were approved by the court.

Committee Notes 2007: This Rule is derived from former General Order 85.

Rule 2015-1. Interim Reports

(a) Chapter 11 and 12 Interim Reports. In all chapter 11 and 12 cases, on a monthly basis until the plan is confirmed or the case is converted or dismissed, the case trustee, debtor in possession, or other responsible person shall file with the court an interim operating report or reports in substantial compliance with such local forms as developed by the United States Trustee.

(b) Other Interim Reports. In addition to the foregoing, the court, upon motion, may require the filing of interim operating reports in any case.

Committee Notes 2007: Most of chapter 13 practice is governed by General Order 83 and Local Rules inconsistent with General Order 83 were invalidated; however, some of the Local Rules in the 2083 series are in effect. It is the intent of the Committee that any changes to Local Rule 2083 not substantively change chapter 13 practice for those cases.

Rule 2084-1. Scope and Definition - Chapter 13 Rules

(a) Scope. Local Rules 2084-1 through 2084-28 govern chapter 13 practice.

(b) Definitions. As used in these 2084 Rules:

- (1)** “arrearage” is the total amount past due to a secured creditor or lessor as of the petition date or, if applicable, as of the date of the filing of a plan;
- (2)** “conduit payment” is the regular contractual post-petition payment owed by a debtor to a real property creditor when the debtor is in default under the terms of the mortgage as of the petition date or is in default after the petition date;
- (3)** “mortgage” is any form of perfected security interest in real property consensually granted by the debtor;
- (4)** “plan” means the original, amended, or modified plan;
- (5)** “real property creditor” is an entity holding a mortgage on real property, or a servicer of that mortgage, that is the principal residence of the debtor;
- (6)** “serve” means by regular mail, email or fax; and
- (7)** “trustee” means the chapter 13 trustee.

Notes 2017: Amended to include definitions relevant to chapter 13 practice.

Rule 2084-2. Filing Requirements

(a) Application to Pay Fee in Installments. Debtor’s petition must be accompanied by the entire fee or an application to pay the filing fee in installments.

(b) Statement of Financial Affairs and Operating Reports. If the debtor is self-employed or engaged in business, the debtor must:

- (1)** Complete Part 11 of the Statement of Financial Affairs; and
- (2)** File monthly operating reports (using Local Form 2084-2) for each month – including the month in which the petition was filed – until plan confirmation.

(c) Dismissal for Failure to File Documents. All documents required by LR 1007-1, the FRBP, and Code § 521 must be timely filed absent a Court order granting an extension. Failure to file required documents in a timely manner may result in case dismissal without further notice or hearing.

Rule 2084-3. Attorney Fees

(a) Application for Flat Fee Payment in Plan. Any original, amended, or modified chapter 13 plan (collectively the “plan”) must indicate on the plan form whether compensation by the attorney representing the debtor will be on a flat fee or hourly basis. In hourly fee cases, counsel must file a separate fee application as provided in section (c).

(b) Flat Fee Requirements. An attorney may elect to seek approval for fees in the order confirming the plan up to the amounts set forth in this Court’s General Orders.

- (1) Entitlement to Flat Fee.** A flat fee is available if:
 - (A)** The attorney agrees to provide all services listed in subsection (2);
 - (B)** The plan provision entitled “Application for Payment of Administrative Expense” contains the attorney’s election to accept a flat fee and identifies the amount of the flat fee;
 - (C)** No party objects to the requested fees; and
 - (D)** The Court confirms the plan or otherwise determines that the requested fees are reasonable.

- (2) Minimum Required Services.** Attorneys electing a flat fee must provide legal services through confirmation of a debtor’s plan, and thereafter assist a debtor to obtain a discharge, including, but not limited to:
 - (A)** Review of financial documents and information;
 - (B)** Consultation, planning and advice, including office visits, email and telephone communications;
 - (C)** Representation and advice regarding filing of pre-filing credit briefing;
 - (D)** Preparation/filing of petition, schedules, statement of financial affairs, current monthly income, payment advice declaration, master mailing list, and declaration re: electronic filing;
 - (E)** Preparation/filing of chapter 13 plan, plan analysis, and necessary amendments;
 - (F)** Preparation/filing of bankruptcy notice in state court actions;
 - (G)** Representation at §341 meeting of creditors, or continued meeting;
 - (H)** Resolution of non-adversary proceeding creditor objections and any hearings related thereto;
 - (I)** Review and analysis of creditor claims for potential objections, and attendance at related hearings;

- (J) Objections to proofs of claim;
 - (K) Preparation/filing of affidavit of no income regarding tax claims;
 - (L) Notify client of unfiled tax return claims, follow up with taxing authority;
 - (M) Preparation of proposed order confirming plan with cover letter to trustee addressing each issue numerically;
 - (N) Preparation/filing of motion to extend (for each: schedules, stipulated order of confirmation, motion to dismiss);
 - (O) Preparation/filing of responses to pre-confirmation objections to dismissal;
 - (P) Preparation/filing of pre-confirmation stipulation to reinstate case;
 - (Q) Responses to motions for stay relief, and attendance at hearings;
 - (R) Drafting and mailing any necessary correspondence;
 - (S) Change of debtor address filings;
 - (T) Representation regarding filing of post-filing education course certificate;
 - (U) Representation regarding discharge eligibility certificate;
 - (V) Amendments to schedules; and
 - (W) Filing of Business Operating Statements, if applicable.
- (3) **Effect of Flat Fee Election.** Unless ordered otherwise, an attorney's election to accept a flat fee is irrevocable and the Court will not approve additional compensation for work necessary to confirm the initial or amended plan or in cases where the Court confirms no plan. The application must state the amount of the flat fee and specify what services are to be rendered for the debtor. The flat fee election does not prohibit debtor's counsel from seeking additional flat fee or hourly compensation for services not mandated in subsection (2).

(c) **Separate Application.** Unless a flat fee has been elected, debtor's counsel must file a separate application for allowance of compensation and reimbursement of expenses in compliance with Code § 330 and FRBP 2016(a).

(d) Attorney Disclosure. The fees sought in the plan must be consistent in amount and description with counsel's FRBP 2016(b) disclosure.

(e) Payment of Attorney's Fees. Unless ordered otherwise and except for pre-petition retainers, all fees must be paid through the plan.

(f) Payment on Dismissal. If no party objects to counsel's fees disclosed in the plan, the Court may approve the fees in the dismissal order or in a separate order lodged by debtor's counsel.

Notes 2017: LR was amended to include the services required for flat fee compensation (previously delineated in former General Order 106).

Rule 2084-4. Plan

(a) Plan Requirements. Local Form 2084-4 (Chapter 13 Plan) must be used for all original, amended, or modified plans. All sections of the plan must be completed, or if not applicable marked with N/A or NONE. The treatment of all known secured or priority creditors must be disclosed in the plan. Varying provisions must be specific and not inconsistent with the Code, FRBP or Local Rules.

(b) Defaulted Residential Real Property Mortgage Payments. This subsection applies to all plans filed in this District when the debtor is in default under the terms of the mortgage as of the petition date or is in default after the petition date.

- (1) Conduit Payments.** Conduit payments must be made by the debtor to the trustee through the plan. A debtor may be excused from making conduit payments only by a Court order. If the debtor cures the arrearage, the debtor may seek to be excused from conduit payments by:
- (A)** Obtaining a Court order after notice to the trustee and all creditors; and
 - (B)** Filing an amended or modified plan to eliminate future conduit payments.

(2) Debtor's Duties:

Unless the Court has entered an order allowing the debtor to make direct payment to the real property creditor:

- (A)** Debtor must complete the Mortgage Creditor Checklist (Local Form 2084-4A) and Authorization to Release Information (Local Form 2084-4B), and serve these Forms on the trustee – not the Court – within seven (7) days of the petition date.
- (B)** Debtor or debtor's counsel must serve on the trustee a copy of all correspondence, notices, statements, payment coupons, escrow

notices and default notices concerning any post-petition adjustment to the monthly mortgage payment or interest rate immediately on receipt or creation of that document.

- (C) Debtor must include the regular post-petition payment amount owing to the real property creditor along with the trustee's fee of 10% in the regular plan payments.
- (D) In the event the monthly conduit payment is changed due to either a change in escrow requirements or a change in an adjustable interest rate, debtor must decrease or increase the plan payment by the same amount including the trustee's fee of 10%.

(3) Trustee's Duties:

- (A) Under 28 U.S.C. § 586, the trustee is authorized to deduct from any payments collected under the plan the authorized percentage fee. The trustee's obligations under this Local Rule shall not render the trustee subject to any rules and regulations governing mortgage servicers.
- (B) The trustee will disburse conduit payments regardless of whether the Court has confirmed a plan or the real property creditor has filed a proof of claim. The trustee is not required to distribute a partial payment to a real property creditor.
- (C) If the trustee does not have sufficient funds to pay all required monthly conduit disbursements and any required adequate protection payments, the trustee will internally allocate the funds on a pro rata basis to the creditors entitled to disbursements. The trustee will retain the amount allocated to the conduit until there are sufficient funds to make a full conduit payment. The trustee is authorized to pay partial adequate protection payments.
- (D) The trustee may rely on the debtor's representation of the amount of the conduit payment pending notice from the real property creditor of a different amount.
- (E) Within twenty-eight (28) days after the trustee has received any notice of a change in the monthly conduit payment, the trustee will file a notice of the terms of the change with the Court and provide notice of that change to debtor, debtor's attorney and real property creditor. The notice will be treated as an amendment to the creditor's real property proof of claim and a modification to the debtor's plan under Code §§ 1323 or 1329. A party in interest will have an opportunity to object within twenty-one (21) days after the trustee files it. After the filing of the notice, the trustee is authorized to disburse the new monthly conduit payment. In the event of an objection to the notice, the objecting party must set the objection for hearing. Unless a Court order is entered sustaining the objection, the trustee is authorized to disburse the new monthly conduit payment.

- (F) If the amount of the new conduit payment jeopardizes the feasibility of the plan, the trustee may file a motion to modify the plan or seek dismissal.
- (G) The trustee shall comply with FRBP 3002.1(f).

(4) Real Property Creditor's Duties:

- (A) The real property creditor must file a proof of claim (Official Form B410) with attachments, within seventy (70) days after the filing of the petition or conversion of the case.
- (B) The real property creditor must comply with FRBP 3002.1 and file Official Form B410s-1 or Official Form B410s-2, as applicable.
- (C) At least sixty (60) days before a change of name or address where payments are to be made, the real property creditor must file a notice of the change on the claims register, and serve the trustee, debtor and debtor's counsel. If a transfer of a claim is other than for security, the transferee must file official forms B2100A and B2100B, pay any applicable fee, and serve the official forms on the trustee, debtor, and debtor's counsel.
- (D) The real property creditor must immediately serve the trustee with copies of correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any change to the monthly payment or interest rate.
- (E) Confirmation of a plan imposes an affirmative duty and legal obligation on the real property creditor to do all of the following:
 - (i) Apply payments on the arrearage in accordance with the plan. Unless ordered otherwise, the arrearage shall be deemed cured and paid in full upon the entry of the discharge order.
 - (ii) Treat the debtor's account as current upon confirmation of the plan, thereby precluding the imposition of late payment charges or other default-related fees based solely on any pre-petition default.
 - (iii) Apply the conduit payments to the month in which they were designated under the plan. Even if payments are placed into a suspense, forbearance or similar account, they will be deemed applied to the debt pursuant to this subsection.
 - (iv) The real property creditor cannot impose a late charge on conduit payments paid or tendered to the real property creditor during the contractual grace period. For purposes of determining whether a late charge may be imposed, a conduit payment tendered by the trustee must be applied to the post-petition installment payment then due.

(v) Conduit payments received timely by the trustee in accordance with these procedures shall be deemed payments made timely under the terms of the mortgage.

(F) The real property creditor must comply with FRBP 3002.1(g).

(5) **Interim Mortgage Payments.** The trustee may pay an amount not exceeding two full regular monthly payments inclusive of escrow deposits. These payments shall reimburse the real property creditor for post-petition delinquencies that may accrue until the trustee begins payments to that creditor. Once the trustee begins disbursements that include conduit payments, those payments shall constitute current payments on the mortgage regardless of the contractual due date.

(6) **Effect of Plan Completion.** If the debtor pays the arrearage, together with any interest as specified in the confirmation order, then all pre-petition defaults under the note and other loan documents will be deemed cured.

(c) **Amended Plan.** Other than the original plan, a plan filed before entry of a confirmation order must be titled “Amended Plan.”

(d) **Modified Plan.** A plan filed after entry of a confirmation order must be titled as a “Modified Plan.” A modified plan must conform with Local Form 2084-4, and account for disbursements made to creditors.

(e) **Service of Plan.** The debtor must file each plan using the applicable ECF filing event so that service can be effected by the Clerk or Bankruptcy Noticing Center.

(f) **Dismissal for Failure to Properly File.** If the debtor fails to file any plan, the trustee may lodge and serve a proposed dismissal order. If the deficiency is not cured or a hearing is not requested within fourteen (14) days of service of the proposed dismissal order, the Court may dismiss the case without further notice or a hearing.

Notes 2017: LR 2084-4 was substantially amended. It requires mortgage conduit payments for all chapter 13 cases where there are pre- or post-petition mortgage arrears. The amendments also require Local Form 2084-4 Plan to be used for all original, amended, or modified plans, clarifying that requests for moratorium are plan amendments or modifications and should be treated as such. Finally, the amendments set forth a procedure authorizing a trustee to lodge a dismissal order for failure to properly file plan.

Rule 2084-5. Tax Returns

Unless the Court grants a motion for an extension of time, if a debtor fails to comply with Code § 521(e) or (f), or § 1308(a), the trustee may lodge a dismissal order and the Court may summarily dismiss the case, or the trustee may file a motion to dismiss. The Notice of Commencement of Case issued by the Clerk's Office will include a statement that the Court may summarily dismiss the case for failure to file the required tax returns. If the debtor elects to provide a transcript in lieu of a return, the debtor must provide a "Tax Return Transcript" that includes a line item summary with substantially similar information as provided on the tax return.

Notes 2017: A simple account transcript that summarizes the financial status of the account, date of filing, assessments, and so forth, is not substantially similar to a tax return and fails to comply with Code § 521(e) or (f).

Rule 2084-6. Adequate Protection Payments

(a) Plan Proposal. A plan must include monthly adequate protection payments to creditors secured by depreciating personal property, beginning with month one. Unless ordered otherwise, the debtor shall not make adequate protection payments directly to any creditor or reduce the amount of the plan payments for any amount attributable to the adequate protection payments.

(b) Trustee Payment. The trustee is authorized to make pre-confirmation adequate protection payments to one or more secured creditors if:

- (1)** The plan provides for payment of the adequate protection payments;
- (2)** The debtor's Schedule D discloses the debt and describes the collateral;
- (3)** A secured proof of claim is filed, with documentation evidencing a perfected purchase money security interest in the personal property;
- (4)** The debtor or creditor sends a request to the trustee for payment of pre-confirmation adequate protection payments set forth in the plan; and
- (5)** The personal property collateral is depreciating and the amount of the adequate protection payments approximates the depreciation, which is generally at least 1% of the value of the property per month.

(c) Payment Without Prejudice. Payment of pre-confirmation adequate protection is without prejudice to the secured creditor's right to object to the plan, or seek a determination on the value of the secured claim or amount necessary to provide adequate protection.

(d) Timing of Payments. The trustee is entitled to take the percentage fee from all adequate protection payments received or collected. To the extent the trustee has funds on hand, the trustee must begin making pre-confirmation adequate protection payments if the trustee receives the request more than fourteen (14) days before the trustee's scheduled monthly distribution; otherwise the trustee will distribute adequate protection payments

beginning with the next month's distribution. If the debtor has paid an insufficient amount to pay adequate protection payments in full, the trustee will pay the creditors pro rata, as modified by LR 2084-4(b)(3)(C).

(e) Payment on Confirmation. If the trustee has not made pre-confirmation adequate protection payments, the trustee will disburse the adequate protection payments after plan confirmation.

(f) Payment on Pre-Confirmation Dismissal. If the Court dismisses the case before plan confirmation, the trustee will pay the creditor any adequate protection payments due and owing, in accordance with (b) above or Court Order, from funds received by the trustee under Code § 1326(a)(1)(A), less the statutory trustee's fee and allowed administrative expenses. If the trustee is required to pay adequate protection payments to more than one creditor but the trustee has insufficient funds to pay them in full, the trustee shall pay the creditors pro rata.

Rule 2084-7. Rescheduled or Continued Meeting of Creditors

For good cause, the trustee may reschedule or continue the meeting of creditors. If rescheduled, the trustee must request that the Clerk provide notice of the rescheduled meeting using the applicable ECF filing event so that service can be effected by the Clerk or Bankruptcy Noticing Center. If continued, the trustee will note the continued hearing date on the docket.

Notes 2017: This is new LR establishes notice procedures for a rescheduled or continued meeting of creditors and incorporates subsection (f) of former LR 2084-8 concerning continuance of a meeting. The amendments also clarify that rescheduling or continuing is at the trustee's discretion. See also LR 2003-1 Meeting of Creditors.

Rule 2084-8. Reserved

[RESERVED]

Notes 2017: LR 2084-8 Serving the Plan or Motion for Moratorium has been eliminated. Text concerning serving a plan has been incorporated into LR 2084-4 and text concerning continuing meeting of creditors has been incorporated into LR 2084-7.

Rule 2084-9. Creditor Objection to Plan

(a) Time for Filing Creditor Objection.

- (1)** The deadline for a creditor to file an objection to confirmation of a plan is fourteen (14) days after the date set for the first meeting of creditors or twenty-eight (28) days after service of the plan, whichever is later.
- (2)** In the event of a continued meeting of creditors or reinstatement of the case, the deadline for creditor objections to the plan will be reset to fourteen (14) days after the date of the continued meeting of creditors or twenty-eight (28) days after service of the plan, whichever is later.

- (3) If the case is dismissed after the meeting of creditors but before the expiration of the deadline for creditor objections, and is thereafter reinstated, the deadline for creditor objections will be the original objection deadline or fourteen (14) days from the date of reinstatement, whichever is later.

(b) Non-Objection Is Acceptance. The failure of a party in interest to timely file an objection to confirmation will constitute acceptance of the plan under Code § 1325 and a waiver of the requirement that the Court hold a confirmation hearing within forty-five (45) days after the date of the meeting of creditors under Code § 1324(b). Notice of the waiver of the 45-day confirmation hearing requirement and acceptance of the plan due to a creditor's failure to timely object must be conspicuous in the notice of date to file objections served on all creditors.

(c) Valuation Objection. A secured creditor who disagrees with the valuation of the creditor's collateral must file an objection containing the creditor's estimate of the value of the collateral, the method of determining the value, and the amount of claim that is secured. On request, the debtor must make the collateral available to the creditor for inspection and appraisal.

Notes 2017: The time deadlines have been amended and supplant those in FRBP 3015(f). Separate deadlines are established in the event of a continued meeting of creditors or case reinstatement and depending on whether a case is dismissed before or after a meeting of creditors is held.

Rule 2084-10. Trustee's Recommendation/Objection

(a) Trustee Recommendation/Objection. The trustee will file a recommendation/objection within twenty-eight (28) days after the last date set for creditor objections to a plan.

(b) Debtor Compliance or Dismissal. Within thirty (30) days after the trustee files the recommendation/objection, the debtor must either comply with the trustee's requests or file an objection and obtain a hearing date. The Court may summarily overrule any objection that fails to identify an issue or other impediment to plan confirmation. A request for additional time to respond does not constitute an objection. If the debtor does not timely comply, the trustee may file and serve a notice of intent to lodge a form of order dismissing the case, with a copy of the order attached. Ten (10) calendar days after serving the notice, the trustee may lodge an order dismissing the case without further notice or hearing.

(c) Dismissal If No Plan Payments. If the debtor makes no plan payments by the deadline for the trustee's recommendation/objection, the trustee may lodge an order dismissing the case rather than filing a recommendation/objection, and the Court may summarily dismiss the case.

Notes 2017: This LR does not alter the obligations or time periods set forth in LR 2084-15 concerning failure to make plan payments. Rule amended to provide that Court may summarily overrule any objection to dismissal that fails to identify an issue or other impediment to plan confirmation, incorporating former LR 2086-16.

Rule 2084-11. Plan Confirmation Hearings

(a) Trustee Need Not Attend. Unless ordered otherwise, the trustee need not attend hearings on creditor plan objections.

(b) Confirmation Hearing. The Court will set a confirmation hearing on any party in interest's request. The right to a confirmation hearing within forty-five (45) days of the creditors meeting is waived absent a timely filed objection and hearing request.

Rule 2084-12. Confirmation of Plan Without Hearing

Subject to LR 2084-13, the Court may confirm a plan without a hearing if: (1) there are no timely filed objections and the proposed order is signed by the trustee; or (2) the trustee and all objecting creditors sign a stipulated order.

Rule 2084-13. Order Confirming Plan

(a) Approval. Unless ordered otherwise, any order confirming a plan must be signed by the trustee and any objecting creditor or party.

(b) Form of Order. A plan confirmation order must be in a form approved by the trustee.

(c) Treatment of Docketed Claims. Debtor must ensure that the proposed confirmation order provides appropriate treatment for each secured or priority claim in the claims register.

(d) Notice of Submitting. When a proposed confirmation order is submitted to the trustee, debtor's counsel must file a notice of submission attaching a copy of the order.

(e) Trustee to Lodge Order Confirming. No later than forty-five (45) days after receipt of the proposed confirmation order, the trustee will (1) approve and lodge, or (2) file a notice of rejection. If the trustee approves the stipulated order, the trustee will file a notice of lodging attaching a copy of the order.

(f) Trustee Plan Payment. Unless ordered otherwise, the trustee must commence disbursements under the order confirming plan within forty-five (45) days after entry of the order.

Notes 2017: Amended LR requires counsel to file a notice of submission when the confirmation order is submitted to the trustee.

Rule 2084-14. Confirmation Status Hearing

Any party in interest may set a confirmation status hearing and provide notice to the debtor, debtor's counsel, the trustee and all parties in interest.

Notes 2017: This is a new LR.

Rule 2084-15. Trustee Motion to Dismiss

(a) **Trustee Motion.** A trustee's request to dismiss for debtor's failure to make timely plan payments or move the case toward confirmation may be summarily granted unless, within thirty (30) days after service of the motion, the debtor:

- (1) Brings plan payments current or agrees with the trustee to a payment schedule;
- (2) Files a detailed response and requests a hearing;
- (3) Files and serves a conversion notice or motion; or
- (4) Files and serves an amended or modified plan.

(b) **Dismissal.** The trustee may lodge a dismissal order and the Court may summarily grant the motion if the debtor fails to comply with (a).

Notes 2017: LR amended to clarify that the case may be summarily dismissed if the debtor fails to comply with this Local Rule.

Rule 2084-16. Reserved

[RESERVED]

Notes 2017: Former LR concerning a debtor's objection to a proposed dismissal order is incorporated into amended LR 2084-10.

Rule 2084-17. Vacating Dismissal Order

The Court may vacate a dismissal order without a hearing if the trustee consents. If the trustee does not consent, the debtor must set the matter for hearing.

Notes 2017: LR amended to clarify that the procedure to reinstate dismissed cases is to seek an order vacating the dismissal order.

Rule 2084-18. Plan Payments

The trustee may designate the form and where plan payments must be directed.

Rule 2084-19. Reserved

[RESERVED]

Notes 2017: This LR concerning filing secured or priority claims has been subsumed into amended LR 5005-4.

Rule 2084-20. Reserved

[RESERVED]

Rule 2084-21. Reserved

[RESERVED]

Rule 2084-22. Reserved

[RESERVED]

Rule 2084-23. Stay Relief to Secured Creditors

Unless ordered otherwise, or directed by the parties, the trustee will cease making payments on the secured claim of a creditor who has obtained stay relief.

Rule 2084-24. Reserved

[RESERVED]

Rule 2084-25. Sale of Property or Incurring New Debt

(a) Pre-confirmation Motion to Incur New Debt. With the trustee's consent, the debtor may, before plan confirmation, seek ex parte approval to incur new debt, or refinance an existing home loan. The debtor's motion must certify that:

- (1)** The debtor is current on plan payments and has provided the trustee with current income verification;
- (2)** The debtor is not in default under the terms of the chapter 13 plan;
- (3)** Schedules I and J – whether original or amended – were filed within the prior thirty (30) days showing that the debtor has the ability to pay all future plan payments, projected living and business expenses, and the new debt;
- (4)** The debt is for a reasonable amount; and
- (5)** Depending on the nature of the loan, that:

(A) Vehicle Loan:

- (i)** The new debt is a single loan to purchase a motor vehicle that is necessary for the maintenance or support of the debtor or a dependent of the debtor or, if the debtor is self-employed or engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business; and
- (ii)** The only security for the new debt will be the motor vehicle.

(B) New Home Loan:

- (i)** The new debt is a single loan incurred to purchase a residence that is necessary for the maintenance or support of the debtor and debtor's family;
- (ii)** The only security for the new debt will be the residence; and
- (iii)** The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the debtor's current monthly mortgage or rental payment, or a reasonable amount.

(C) Refinancing an Existing Home Loan:

- (i)** The new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence;
- (ii)** The only security for the new debt will be the residence;
- (iii)** All existing liens and security interests encumbering the residence will be paid from the proceeds of the new debt; and
- (iv)** The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the debtor's current monthly mortgage payment.

(b) Pre-Confirmation Sale. With the trustee's consent, the Court may approve an ex parte motion by the debtor to sell real or personal property with a value of \$2,500 or more other than in the ordinary course of business. The debtor's motion must contain the following certification:

- (1)** The sale price represents a fair value for the subject property;
- (2)** All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;

- (3) All costs of sale, including escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (4) The sale price is all cash;
- (5) The debtor will not relinquish title to or possession of the property before payment in full of the purchase price;
- (6) The sale is an arm's length transaction; and
- (7) "Trading in" a vehicle as part of the purchase price for a new vehicle complies with the requirements of (4) and (5) of this subsection.

(c) **Post-Confirmation Sale or Incurring New Debt.** In a confirmed case, in lieu of obtaining a Court order, the debtor may request the trustee's written consent by providing all of the information required to be included in a Motion as authorized by subsections (a) & (b).

(d) **Incurring Other New Debt and Transfers of Debt.** If the trustee does not give consent or if the debtor wishes to incur new debt or transfer property on terms and conditions other than provided for in subsections (a) – (c), the debtor may file a motion, serve it on the trustee and those creditors who are entitled to notice, set the hearing on the Court's calendar with the notice required by Rule 2002 and LR 9014-1, and file a certificate of service.

Notes 2017: This Local Rule has been restructured to clarify the information required for the sale of property or incurring of new debt applies in both pre-confirmation ex parte motions by the debtor and post-confirmation requests for written authorization from the trustee.

Rule 2084-26. Debtor Completion of Plan Requirements; Discharge

Before the Court enters the debtor's discharge under Code § 1328(a), the debtor must provide to the trustee information required by Code § 1302(d)(1)(C) and file Local Form 2084-26.

Rule 2084-27. Transmission of Documents with Personally Identifiable Information to Trustee

Personally Identifiable Information as described in FRBP 9037 must be redacted in any document submitted to the trustee. The trustee may require debtors and counsel to use a specific method or portal, such as a website, for the transmission of documents that may contain personally identifiable information, including tax returns and bank statements.

Notes 2017: This is a new LR.

Rule 2084-28. Electronic Service on Chapter 13 Trustees

Electronic service of process on trustees must be accomplished in accordance with the instructions provided on the Court's website.

Notes 2017: This is a new LR.

Rule 2090-1. Attorneys – Admission to Practice

(a) Bankruptcy Court Bar. Any attorney admitted to practice before the United States District Court, District of Arizona, may practice before the bankruptcy court.

(b) Participation of a Local Attorney. If an attorney is a member of the bar of this court but does not currently reside in Arizona, the court may require the association of resident local counsel. If the nonresident attorney fails to respond to any order of the court, for appearance or otherwise, the associated local counsel will have the responsibility and full authority to act for and on behalf of the client in all matters in connection with the case or proceeding, including hearings, pretrial conferences, and trial.

(c) Pro Hac Vice Practice. An attorney who is not a member of the bar of the United States District Court, District of Arizona, but who is a member in good standing of the bar of another United States District Court may, upon application and court order, be permitted to appear and participate in a particular case. Unless authorized by the Constitution of the United States or an Act of Congress, an attorney is not eligible for limited admission pursuant to this rule if (i) the attorney resides in Arizona, (ii) the attorney is regularly employed in Arizona or (iii) the attorney is regularly engaged in the practice of law in Arizona. Unless otherwise ordered, the applicant shall designate in the application local counsel currently residing in Arizona with whom the court and opposing counsel may readily communicate regarding the conduct of the case. The application shall also state, under penalty of perjury, whether the applicant has filed with this court any other applications for limited admission or pro hac vice applications within one year preceding the current application and if so, the title and case number of each case in which such application was filed, the date of each application and whether each application was granted or denied. The application shall also contain the address, e-mail address, telephone number and written consent of the designated local counsel, if any.

(d) Parties Appearing Without an Attorney. Any party proceeding without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action.

(e) Change of Address. An attorney who changes office address must submit a written change of address to the clerk. Completion and submission of this address change will update the attorney's address in the court's electronic database. In those cases where the attorney represents a party other than the debtor, this address change will not update the address on the mailing lists for those cases. In those cases, to update the address on the mailing list and to give notice of the address change to other attorneys and parties, the attorney must file a notice of change of address in each case. In cases where the attorney does represent the debtor, the address is updated in the database, and also updated on the mailing lists for those cases.

If the change of address is because the attorney has changed law firms, in each case in which the attorney has appeared and in which the former firm will continue to represent the debtor or other party, a notice must be filed stating that the attorney no longer represents the party and stating who in the firm now represents that party. For those cases in which the attorney, at the new firm, will continue to represent the debtor or other party, the attorney will remain the attorney of record at the new firm and address.

(f) Student Practice. Notwithstanding section (a) above, a student duly enrolled in an American Bar Association (ABA) - accredited law school may represent parties in bankruptcy cases or proceedings pending or contemplated to be filed in this court, and may appear in court on behalf of such parties, upon compliance with District Court LRCiv 83.4 "Student Practice Rule"

of the United States District Court for the District of Arizona, subject to the following modifications:

- (1) The knowledge required by District Court LRCiv 83.4(b)(3) shall include knowledge of the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Procedure for the District of Arizona, and the General Orders of this court; and
- (2) The consent form required by District Court LRCiv 83.4(f)(5) shall be filed with the Clerk of the Bankruptcy Court, under the caption of the case in which the student intends to appear, or otherwise presented to the judge presiding over such case, instead of the filing required by District Court LRCiv 83.4(f)(5).

Rule 2090-2. Bankruptcy Petition Preparers

(a) **State Certification Required.** Only bankruptcy petition preparers, as defined by Bankruptcy Code § 110, who are certified as legal document preparers pursuant to the Rules of the Supreme Court of the State of Arizona are permitted to prepare documents for filing in the United States Bankruptcy Court for the District of Arizona.

(b) **Sanctions.** Any bankruptcy petition preparer who prepares a document for filing in the United State Bankruptcy Court for the District of Arizona and who is not a certified legal document preparer as stated above may be subject to the sanctions provided in Bankruptcy Code § 110 and/or as provided by law.

(c) **Certification Number.** In addition to the requirements of Bankruptcy Code § 110, a bankruptcy petition preparer, certified as a legal document preparer under Arizona law, shall provide his or her certification number and a business phone number on any document prepared for filing.

(d) **Other Prohibitions.** This Order shall not be construed as a modification of Bankruptcy Code § 110(f), which prohibits bankruptcy petition preparers from using the word "legal" or any similar term in any advertisement or advertising under any category which utilizes said term.

Rule 3007-1. Claims - Objections

(a) **Notice of Bar Date to Respond to Objection.** The party filing an objection to a proof of claim that is not asserted as part of an adversary proceeding shall give notice: (1) that the claimant has 14 days from service of the objection to file and serve a response to the objection; and, (2) that if a timely response is not filed and served, the objection may be sustained by the court without further notice or hearing.

(b) **Order Sustaining Objection.** If a timely response is not filed and served by the claimant, the objecting party may lodge an order with the court sustaining the objection.

(c) **Hearing.** If the claimant timely files and serves a response to the objection, the objecting party must obtain a hearing date, serve notice on the claimant and file a certificate of service.

(d) Additional Requirements in Chapter 7 and 13 Cases. In chapter 7 and 13 cases, the following additional rules apply:

- (1)** The objection must state a specific basis for disallowing the claim under Bankruptcy Code § 502;
- (2)** The caption of the objection, any notice served in regard to the objection, and any order entered in regard to the objection must state the name of the claimant and the claim number of the disputed claim as set forth in the official claims register maintained by the court; and,
- (3)** The objection may incorporate the certificate of service of the objection.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 3018-1. Acceptance or Rejection of Plans

- (a) Case Number.** The case number shall appear on each page of the ballot.
- (b) Ballots Sent to Proponent.** Ballots shall be sent to the plan proponent, not filed with the court.
- (c) Ballot Report.** No later than 3 business days before the hearing on the confirmation of the plan, the plan proponent shall file a ballot report setting forth the results of the voting by class. The report shall include a list of all creditors and equity security holders who have filed acceptances or rejections of the plan. The report shall also include a tally, by class, of the number of acceptances and rejections and the dollar amount in claims and the amount of allowed interests represented by the acceptances and rejections. The report shall identify any ballots received after the due date set by the court and shall state whether such ballots are included in the tally. Unless otherwise ordered by the court, at or prior to the confirmation hearing, the plan proponent shall provide a copy of the report and the ballots to the court and to parties in interest who have requested such copies.
- (d) Report of Objections and Cramdown Request.** The ballot report shall also state whether any objections to confirmation were filed and whether the plan proponent intends to proceed with confirmation under Bankruptcy Code § 1129(a) or (b).

Rule 4001-1. Automatic Stay - Relief From

(a) Form. A motion or stipulation for relief from the automatic stay shall be in the form as required by Local Rule 9004-1. The caption shall contain a brief description of the property, and the nature of the relief requested. The motion or stipulation and notice provided for in this Local Rule together shall constitute a request for relief from the automatic stay and such request shall be deemed to have been made after completion of service of the motion or stipulation and notice.

(b) Residential Property Pre-Filing Certification. Unless the movant is seeking emergency relief under Bankruptcy Code § 362(f), a motion seeking relief as to the debtor's residence must be accompanied by a certification that: (i) movant's counsel sent a letter seeking to resolve the issues necessitating the motion to debtor's counsel or the debtor, if the debtor is without counsel, and that after sincere effort the parties have been unable to resolve the matter, and (ii) the letter was sent at least seven days prior to the filing of the motion. In the absence of such certification the court may deny the inclusion of attorney's fees as part of the secured debt or as part of the allowed claim.

(c) Service.

(1) Motions. A motion for relief from the automatic stay, a proposed form of order, and the notice required by subsection (d) shall be promptly served by movant upon:

(A) The debtor;

(B) The debtor's counsel;

(C) The case trustee, if any; and

(D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured creditors' committee and counsel for any committee appointed under the Code.

(2) Stipulations. A stipulation for relief from the automatic stay entered into by the parties before the filing of a motion, a proposed form of order, and the notice required by subsection (d) shall be promptly served by movant upon:

(A) The debtor;

(B) The debtor's counsel;

(C) The case trustee, if any; and

(D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured creditors' committee and counsel for any committee appointed under the Code.

(3) Additional Notice. The notice required by subsection (d) of this rule shall be promptly served by movant upon:

(A) Any other party known to movant to claim an interest in the property that is the subject of the motion; and

(B) Any other person or entity required by law or the court.

(4) Stipulated Order.

Upon proper notice, the movant may upload a Stipulated Order Modifying the Automatic Stay without the necessity of filing a motion for relief and without incurring a filing fee should the parties resolve the matter without court action.

(d) Notice of Motion or Stipulation. Contemporaneously with the motion or stipulation, movant will serve and file a form of notice providing the details of the motion or stipulation and that if no objection is served on movant and filed within 14 days of service, the motion or stipulation may be approved by the court.

(e) Movant's Supporting Documents. Each motion shall be supported by legible copies of:

- (1) All documents asserted to establish a valid, perfected security interest; and
- (2) All documents that movant contends support an assertion of a lack of adequate protection or equity in property, including appraisals or summaries thereof, currently in movant's possession or control upon which it intends to rely at final hearing.

(f) Entry of Order. If an objection to the motion or stipulation is not timely filed and served, the proposed form of order may be lodged and served with a certification of service and of no objection, which certification may not be made until the expiration of three business days after the last day for objection. If the court determines that the movant filed improperly or in bad faith a certification of no objection, the movant may be subject to sanctions.

(g) Form of Order. The order lodged with the court shall not grant relief greater than that requested in the motion or stipulation.

(h) Objection. An objection to the motion or stipulation for entry of an order for relief from stay shall be supported by specific facts. The objection shall be supported by legible copies of all documents that the objector contends supports an assertion of adequate protection or equity in property, including appraisals or summaries thereof, currently in the objector's possession or control, which the objector intends to rely on at a final hearing.

(i) Procedure Upon Objection.

- (1) If a timely objection is filed and served, the court shall issue an order establishing the procedures for adjudication of the motion, including the procedures for the movant to obtain and notice a date, time, and place for a preliminary hearing in the matter or setting a preliminary or final hearing.
- (2) Relief may be granted or denied at the preliminary hearing based upon the affidavits, declarations, and other supporting documentation filed as part of the motion or objection if the opposing party's affidavits, declarations and supporting documentation fail to establish the existence of a material issue of fact that requires an evidentiary hearing.

(j) Separate Litigation File. Upon request or sua sponte, the court may order the clerk to establish a separate contested matter litigation file.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 4001-2. Motion for Entry of Order Confirming Termination or Absence of Stay

(a) Form. A motion or stipulation for entry of an order confirming termination or absence of the stay shall be in the form as required by Local Rule 9004-1. The motion or stipulation and notice provided for in this Local Rule together shall constitute a request for entry of an order confirming termination or absence of the automatic stay and such request shall be deemed to have been made after completion of service of the motion or stipulation and notice.

(b) Service.

(1) Motions. A motion or stipulation for entry of an order confirming termination or absence of the stay, a proposed form of order, and the notice required by subsection (c) shall be promptly served by movant upon:

(A) The debtor;

(B) The debtor's counsel;

(C) The case trustee, if any; and

(D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured creditors' committee and counsel for any committee appointed under the Code.

(2) Stipulations. A stipulation for entry of an order confirming termination or absence of the stay entered into by the parties before the filing of a motion, a proposed form of order, and the notice required by subsection (c) shall be promptly served by movant upon:

(A) The debtor;

(B) The debtor's counsel;

(C) The case trustee, if any; and

(D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured creditors' committee and counsel for any committee appointed under the Code.

(3) Additional Notice. The notice required by subsection (c) of this rule shall be promptly served by movant upon:

(A) Any other party known to movant to claim an interest in the property that is the subject of the motion; and

(B) Any other person or entity required by law or the court.

(4) Stipulated Order.

Upon proper notice, the movant may upload a Stipulated Order confirming the termination or absence of the automatic stay without the necessity of filing a motion and without incurring a filing fee should the parties resolve the matter without court action.

(c) Notice of Motion or Stipulation. Contemporaneously with the motion or stipulation, movant will serve and file a form of notice providing the details of the motion or stipulation and that if no objection is served on movant and filed within 14 days of service, the motion or stipulation may be approved by the court.

(d) Contents of Motion or Stipulation. Any motion relating to a separate case shall contain the citation to each prior case and jurisdiction of each case.

(e) Entry of Order. If an objection to the motion or stipulation is not timely filed and served, the proposed form of order may be lodged and served with a certification of service and of no objection, which certification may not be made until the expiration of three business days after the last day for objection. If the court determines that the movant filed improperly or in bad faith a certification of no objection, the movant may be subject to sanctions.

(f) Form of Order. The order lodged with the court shall not grant relief greater than that requested in the motion or stipulation.

(g) Objection. An objection to the motion or stipulation for entry of an order confirming termination or absence of the automatic stay shall be supported by specific facts. The objection shall be supported by legible copies of all documents that the objector contends supports the objection.

(h) Procedure Upon Objection.

- (1)** If a timely objection is filed and served, the court shall issue an order establishing the procedures for adjudication of the motion, including the procedures for the movant to obtain and notice a date, time, and place for a preliminary hearing in the matter or setting a preliminary or final hearing.
- (2)** At least three days prior to the preliminary hearing, the parties must file and serve declarations or affidavits to support their respective positions. Supporting documentation may include, but is not limited to, a payment history and proof of payment. Failure to file these declarations may result in the court granting or denying the relief requested. If there is a pending foreclosure or trustee sale, and if not previously disclosed in the motion, the movant's declaration must disclose the date, time and place of the sale.
- (3)** At the preliminary hearing, the parties must present a prima facie case on any issue for which that party bears the burden of proof. An affidavit or declaration, along with supporting documentation, may be utilized for such purposes.

(i) Separate Litigation File. Upon request or sua sponte, the court may order the clerk to establish a separate contested matter litigation file.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 4001-3. Cash Collateral – Agreement for Immediate Use

(a) Interim Order. Where the debtor and one or more parties with an interest in the cash collateral have agreed to the immediate use of cash collateral, the court, upon motion, may enter an interim order approving the agreement.

(b) Service And Form Of Notice. The debtor shall serve notice of the interim order and bar date for objections on parties to the agreement, the United States trustee, and entities entitled to notice under Rule 4001(d). The notice shall contain: (1) a detailed description of the terms of the agreement and the interim order, or in lieu of a detailed description, a copy of the agreement and interim order; (2) the date by which objections must be filed and served, which shall be 14 days from the date the notice is served, unless otherwise ordered by the court; and (3) the names and addresses of those persons upon whom objections must be served. The notice shall state that, if no objection is timely filed and served, the court may direct that the interim order shall continue in effect until a specified date or that the interim order shall become the operative order on the use of cash collateral until modified by the court.

(c) Certificate Of Service. The debtor shall file a certificate of service evidencing compliance with this Local Rule and Rule 4001(d).

(d) Procedure If No Objection. If no objection is timely filed and served, the court may direct that the interim order shall continue as noted in subsection (b).

(e) Procedure Upon Objection. If a timely objection is filed and served, the debtor shall obtain a hearing date and notice all parties entitled to notice under this Local Rule.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

RULE 4001-4. First Day Motions

(a) Advance Courtesy Copy to U.S. Trustee. Except as the Court may otherwise direct before or after the fact, and in addition to the service required by the Federal Rules of Bankruptcy Procedure, Local Rules and case law, for any motion for which an accelerated hearing is sought within the first 30 days after the filing of a chapter 11 petition (*e.g.*, a “first day motion”), the debtor or other movant shall provide the Office of the U.S. Trustee at least 24 hours’ advance notice of the nature of the case, the nature of the relief to be sought, and the proposed timing of the hearing, and shall provide the Office of the U.S. Trustee private courtesy copies of drafts of all such motions as soon as they are in substantially final form. Such advance notice and courtesy copies are required even if this means they must be provided before the petition is filed. The U.S. Trustee shall keep such advance notice and courtesy copies confidential until the case is filed.

(b) Conspicuousness Requirements for First Day, Cash Collateral and Financing Motions. In any such motion, any motion for use of cash collateral pursuant to Code § 363, and any motion for postpetition financing pursuant to Code § 364, the first or second paragraph of the motion shall conspicuously state whether any of the following kinds of relief is sought and, if so, identify the pages of the motion and the attached exhibits that support such relief:

- (1)** Granting a prepetition creditor a lien or security interest in postpetition assets in which the creditor would not otherwise have a security interest by virtue of its prepetition security agreement and applicable law, other than replacement liens in the same kind of collateral as the creditor had prepetition, in order to obtain the use of that creditor’s cash collateral (sometimes known as “cross-collateralization”);
- (2)** Findings, conclusions, holdings or orders as to the amount of a secured debt or the validity, perfection and scope of the security interests securing such debt, that purportedly affect the rights of the estate or anyone other than the debtor in possession and the secured creditor;
- (3)** Release, waiver or abandonment of claims, setoff rights, surcharge rights, avoidance actions and subordination actions against a secured creditor, or findings or stipulations that no such rights exist, that purportedly affect the rights of the estate or anyone other than the debtor in possession and the secured creditor;
- (4)** Granting of liens or security interests against rights and actions arising under Code §§ 544, 545, 547, 548 or 549;
- (5)** The use of funds derived from postpetition financing to pay all or part of a prepetition secured debt, or a provision that deems prepetition secured debt to be postpetition secured debt, other than as permitted by Code § 552(b);
- (6)** Granting surcharge or “carve-out” rights to a debtor’s professionals without providing equivalent treatment to professionals engaged by an authorized committee, or any restrictions on the surcharge or carve-out rights granted to such professionals other than the requirement for Court approval of the fees or expenses (*e.g.*, a restriction against investigating or pursuing causes of action against the secured creditor);

- (7) Payment of prepetition wages, salary or other compensation to an employee in an amount in excess of the Code's priority amount, payment of any severance or vacation pay earned prepetition, or payment of any officer's, director's, insider's or equity holder's prepetition wages, salaries, commissions, benefits or consulting fees; and
- (8) Priming any secured creditor under Code § 364(d) without that creditor's consent.

(c) Limited Scope of Interim Relief. Absent extraordinary circumstances, the Court will ordinarily not grant such a motion that includes any of the provisions listed above on an interim or accelerated basis, and such provisions may be excluded even from "final" orders issued after 14 days' notice, unless an official creditors' committee has had sufficient time to be appointed, organize, engage professional(s), and analyze and investigate the requested relief with the advice of such professional(s).

(d) Reconsideration of Interim and First Day Orders. On any motion for reconsideration filed within 30 days of receipt of notice of the entry of the order granting such a motion on shortened notice, the burden of proof with respect to the appropriateness of the relief shall remain on the debtor or other movant notwithstanding the entry of such order, the extent of funds necessarily and irrevocably expended in reliance on such order.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: This new rule incorporates General Order 82 without change.

Rule 4003-2. Lien Avoidance

(a) Form. A motion to avoid a lien which impairs an exemption under Bankruptcy Code § 522(f) shall be in the form as required by Local Rule 9004-1. A request for lien avoidance under Bankruptcy Code § 522(f) shall not be included in a plan. The motion must describe the property subject to the lien. In the case of real property and in counties where recorded information is available on the Internet, the motion must include the county recorder number of the document evidencing the lien.

(b) Notice of motion. Contemporaneously with the filing of the motion, the movant shall file a form of notice, stating that any response objection to the motion and request for a hearing must be filed within 14 days of service of the motion and notice.

(c) Service. The movant shall serve the motion and notice on all affected lienholders and parties, and file a certificate of service.

(d) Entry of order. If an objection to the motion is not timely filed and served upon the movant, a proposed form of order granting the motion may be lodged with a certificate of service and of no objection. The certificate and proposed form of order may not be filed until three days after the last day for objection.

(e) Procedure upon objection. If a timely objection is filed and served, the movant shall obtain a hearing date on the motion and objection and serve a notice of the hearing on the objecting party, and file a certificate of service.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 4008-1. Reaffirmation

(a) Form. A reaffirmation agreement must conform to Official Form B 240A - Reaffirmation Agreement. If the reaffirmation agreement concerns a secured debt, the security agreement must be attached.

(b) Reaffirmation Without Representation or Certification by Debtor's Attorney. In a case with a debtor unrepresented by an attorney, or where an attorney is unwilling or unable to sign the Certification by Debtor's Attorney, the debtor or creditor must file a motion for approval of the reaffirmation agreement. The motion must conform to Official Form B 240 B – Motion for Approval of Reaffirmation Agreement.

Committee Notes 2009: Rule amended to reference new and revised Official Forms, effective December 1, 2009.

Committee Notes 2007: Section 524 substantially changed the requirements of reaffirmation agreements allowing the deletion of most of the prior rule. Paragraph (b)(3) of the prior Rule (now paragraph (b)) was changed to clarify under what circumstances a motion for approval must be filed.

Rule 5001-1. Clerk's Office

Except as otherwise ordered by the court, the United States Bankruptcy Court Clerk's Offices in Phoenix, Tucson and Yuma shall be open from 9:00 a.m. to 4:00 p.m.

Committee Notes 2007: Incorporates into the local rules General Order No. 90.

Rule 5005-1. Filing Documents

(a) Discovery Documents. Unless the court orders otherwise, transcripts of depositions, interrogatories and answers thereto, requests for production, inspection or admissions and responses thereto shall not be filed with the court except that a "Notice of Service" of the foregoing papers shall be filed. Filing a notice of taking deposition satisfies the requirement of filing a "Notice of Service" with respect to depositions. This Local Rule does not preclude the use of discovery papers as exhibits or as evidence in a motion or a trial. Any party may request that the court permit an original document, such as a subpoena, be filed with it.

(b) Exhibits. Exhibits which are in the custody of the clerk as a result of being marked for identification or having been introduced and/or admitted into evidence during any proceeding shall be disposed of as follows:

- (1)** Returned to the party who offered the exhibit if the party makes written request for their return within 30 days after the time for taking an appeal has expired or after an appeal has become final.

- (2) If not returned pursuant to a timely request, the clerk shall destroy the exhibits upon the closing of the case.

(c) **Sealed Documents.** Documents ordered to be filed under seal shall be disposed of as follows:

- (1) Returned to the party who filed the document if such party obtains a court order for its return.
- (2) If not returned pursuant to court order, the clerk shall destroy the sealed documents upon the closing of the case.

Rule 5005-2. Electronic Court Filing System

(a) Mandatory Electronic Filing.

- (1) **Attorneys and Trustees.** Except as specified in subparagraph (c) below, an attorney or trustee must file electronically all pleadings, petitions and other documents on the bankruptcy court's Electronic Case Filing ("ECF") system.
- (2) **Other Filers.** The following documents are required to be filed electronically by the filer:
 - (A) all proofs of claim and assignments/transfers of claim relating to secured or priority claims;
 - (B) all proofs of claim, assignments/transfers of claim, and requests for notice ("Claim Documents") filed by creditors and other filers after 30 days of receipt of notice from the clerk that they have filed 10 or more Claim Documents in any one-year period;
 - (C) all affidavits or certificates of service, by either the process server who made the service or the attorney or trustee who contracted for the service;
 - (D) all applications for compensation and expenses of an examiner, or a professional employed by a trustee or debtor in possession.; and
 - (E) all applications for payment of unclaimed funds ("Unclaimed Funds Applications") filed by any claimants or agents for claimants after 30 days of receipt of notice from the clerk that they have filed 5 or more Unclaimed Funds Applications in any one-year period.
- (3) **Bankruptcy Petition Preparers.** The following requirements apply to cases in which a bankruptcy petition preparer has prepared the documents for filing.
 - (A) The following documents prepared by a bankruptcy petition preparer shall be filed electronically by the preparer and paper copies containing the original signatures of the debtor and bankruptcy petition preparer shall be submitted to the clerk of court for retention:

Mailing List of Creditors;
Schedules and Statement of Financial Affairs;
Debtor Statement of Intention;
Individual Debtor Statement of Current Monthly Income;
Bankruptcy Petition Preparer Notice to Debtor;
Disclosure of Compensation of Bankruptcy Petition Preparer; and
Exhibits to these documents.

(B) The debtor shall file with the clerk on paper, with the original signature of the debtor, the following documents:

Bankruptcy petition;
Statement of social security number;
Credit counseling certificate
Declaration of evidence of employers' payments; and
Copies of any payment advices.

(C) A document preparer who provides his/her full Social Security Number on their ECF Password Registration and who thereafter makes the above required electronic filings may, in lieu of placing his/her Social Security Number on documents they prepare, instead place his/her Arizona Supreme Court Certified Legal Document Preparer number on the documents and on the Disclosure of Compensation of Bankruptcy Preparer.

Any pleading, petition, or other document presented for filing on paper in contravention of the requirements of this paragraph (a) is subject to rejection as provided in paragraph (d) below.

(b) Documents Under Seal. Unless submitted by a pro se party or ordered by the court, a motion to file documents under seal must be filed electronically in accordance with paragraph (a) above. The court will file electronically any order authorizing the filing of documents under seal. A paper copy of such order must be attached to all documents subsequently delivered under seal to the clerk.

(c) Exceptions from Mandatory Electronic Filing. Pro se parties may file pleadings and other documents on paper. In addition, the following documents are excluded from the electronic filing requirement and must be filed on paper:

- (1)** trial and evidentiary hearing exhibits;
- (2)** documents required to be filed under seal; and
- (3)** other documents required to be filed on paper pursuant to a bankruptcy court order in a particular case or proceeding.

(d) Rejection of Paper Filings. Any pleading, petition, or other document presented for filing in contravention of the requirements of paragraph (a) above is subject to rejection. Upon presentation, any such paper filing will be deemed lodged, but not filed. The judge assigned to the case or, if not available, another judge, will determine whether such paper filing is to be rejected or accepted for filing. A paper document accepted for filing will be deemed filed on the date that it was lodged and will be so entered on the docket. A paper document rejected for filing will be returned to the person or entity who lodged it, with such action noted on the document.

(e) ECF Guidelines. All attorneys and other filers utilizing the ECF system shall comply with *Administrative Procedure Guidelines for Electronically Filed Cases*, as approved by the court (the “ECF Guidelines”). A copy of the ECF Guidelines will be available on the court’s public website.

(f) Document Signature. The electronic filing of a pleading, petition, or other document by an attorney or other filer who is a registered participant in the ECF system constitutes the signature of the attorney or other filer for purposes of federal law. The filing attorney or other filer must retain an original signature document in accordance with the ECF Guidelines.

(g) Case Filing Declaration. An original declaration containing a verification of the petition, lists, schedules, statement of affairs and debtor’s social security number must be filed with the clerk as a separate document pursuant to the ECF Guidelines. Failure to file the signed original declaration within the time periods stated in the ECF Guidelines may result in dismissal of the case without further notice.

(h) Password Use. A password issued for electronic filing may be used by only the attorney or other filer to whom the password is assigned and authorized agents or employees of such attorney or other filer. Passwords will be issued to only specified individuals and not to entities, such as law firms. Pursuant to the ECF Guidelines, the clerk may issue limited use passwords to parties who are not attorneys for the purpose of filing applications for compensation by professionals, operating and other reports, reaffirmation agreements, affidavits of service or process, allowed filings by bankruptcy petition preparers, proofs of claim, assignments/transfers of claims, and requests for notice.

(i) Docket Entry. The electronic filing of a pleading, petition, or other document in accordance with the ECF Guidelines and this rule constitutes entry of such pleading, petition, or other document on the docket.

(j) Electronic Entry of Orders and Judgments and Issuance of Summons. The clerk or judge shall enter all orders, decrees, and judgments in the ECF system. Such entry will constitute entry of such orders, decrees, or judgment on the docket for all purposes. 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 such order or other court-issued document and it had been entered on the docket non-electronically. Orders also may be issued as “text-only” entries on the docket, without an attached document. Such orders are official and binding. The court may sign, seal, and issue a summons electronically, although a summons may not be served electronically.

(k) Electronic Service. Pursuant to the ECF Guidelines, and except as provided in paragraph (l) below: (1) the clerk may serve any notice required by Rule 9022 by electronic means on any party who has consented to such service; and (2) anyone electronically filing a pleading, petition, or other document, when required to serve a copy on an attorney or party in accordance with applicable law or court order, may serve such pleading, petition, or other document by electronic means on an attorney or party who is a registered Electronic Case Filing participant or who otherwise has consented in writing to service by electronic means. Such electronic service constitutes service of the pleading, petition, or other document.

(l) Required Service of Paper Copies. Notwithstanding paragraph (k) above, and unless otherwise ordered, anyone electronically filing a pleading, petition, or other document, when required to serve a copy on an attorney or party in accordance with applicable law or court order, shall serve paper copies of the pleading, petition, or other document on:

- (1) the debtor, when service on both debtor and debtor's attorney is required;
- (2) all creditors, when applicable law or court order requires service on all creditors; and
- (3) all parties entitled to service who are not registered ECF participants or who have not otherwise consented in writing to service by electronic means.

(m) Address Information. An attorney or other filer shall include his or her physical address, telephone and fax numbers, and Internet e-mail address on any pleading, petition, or other document, except for the list of creditors and official bankruptcy forms for lists, schedules and statements and declarations contained therein. Any attorney or other filer utilizing the ECF system must notify the bankruptcy court of any changes in physical address, telephone or fax numbers, or Internet e-mail address.

(n) Untimely or Otherwise Improper Filings. An attorney or other filer whose filing is untimely or otherwise improper may seek appropriate relief from the bankruptcy court upon a showing of good cause or excusable neglect.

(o) Privacy Interests. Any person may apply by motion for an order limiting or prohibiting electronic access to specifically identified materials on the grounds that such materials are subject to privacy interests under applicable law that electronic access would likely prejudice. Information posted on the ECF system may not be downloaded for uses inconsistent with applicable law regarding the privacy concerns of any person.

(p) Documents Filed on Paper. Paper documents scanned into the bankruptcy court's Case Management/Electronic Case File (EM/ECF) system are not to be destroyed, but are to be retained by the clerk for an appropriate period of time to be determined by the clerk and then shall be sent to the Federal Records Center for storage and disposition by the Federal Records Center five years from the date the records were sent.

Committee Notes 2008: Incorporates changes to subsection (p) from General Order 101.

Committee Notes 2007: New rule. Proposed Local Rule 5005-2 incorporates provisions from General Order Nos. 69, 87 and 97 and Interim Operating Order No. 8.

Rule 5011-1. Referral of Bankruptcy Cases and Proceedings

Pursuant to 28 U.S.C. § 157(a), the district court refers to the bankruptcy court for this District all cases under Title 11 and all proceedings under Title 11 or arising in or related to a case under Title 11.

Committee Notes 2007: New rule. Proposed Rule 5011.1 replaces District Court General Order 01-15(1).

Rule 5011-2. Withdrawal Of Reference

(a) Procedure. A motion to withdraw a case or proceeding under 28 U.S.C. § 157(d) must be filed with the bankruptcy court clerk. The bankruptcy court clerk shall transmit the motion promptly to the district court clerk for assignment to and resolution by a district judge.

(b) Recommendation by Bankruptcy Judge. A bankruptcy judge, on his or her own motion, may recommend to the district court that a case or proceeding be withdrawn under 28 U.S.C. § 157(d). Any such recommendation must be served on the parties to the case or proceeding and forwarded to the district court clerk for assignment to and resolution by a district judge.

(c) Applicable Rules. Except as directed by the district court, the FRBP and Local Bankruptcy Court Rules, rather than the Local Rules of Civil Procedure, apply to any case or proceeding withdrawn under 28 U.S.C. § 157(d). For purposes of implementing the Local Bankruptcy Court Rules from and after the date that the district court directs the withdrawal of any case or proceeding under 28 U.S.C. § 157(d), any reference in the Local Bankruptcy Court Rules to the word “Court” will mean the district court, and any reference in the Local Bankruptcy Court Rules to the word “Clerk” will mean the clerk of the district court.

Committee Notes 2007: New rule. Rule 5011.2(a) replaces District Court General Order 01-15(b), which is no longer fully consistent with 28 U.S.C. § 157. Rule 5011.2(a) and (b) track Northern District of California’s B.L.R.5011-2(a) and (b). Rule 5011.2(c) is intended to discourage forum-shopping and increase consistency with respect to the handling of withdrawn cases and proceedings.

Rule 5095-1. Deposit Of Funds In The Registry Account

(a) Court Order Required. When funds are sought to be deposited in the Registry Account of the court, the party or parties shall make application to the court for an order to deposit the funds. No money shall be sent to the court or its officers for deposit into the court's registry without a court order signed by the presiding judge in the case or proceeding. The form of order submitted shall be in accordance with the following provisions of this Local Rule.

(b) Investment of Registry Funds. Where, by order of the court, funds on deposit with the court are to be placed in some form of interest bearing account, the clerk is directed to use the Court Registry Investment System (CRIS), administered by the Administrative Office of the United States Courts. CRIS shall be the only investment mechanism authorized.

(c) Accounts in CRIS. An account for each case will be established in CRIS, titled in the name of the case giving rise to the deposit of funds. Money from each case deposited in CRIS will be “pooled” together with those on deposit with Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, held at Treasury. Income generated from fund investments will be distributed to each case. Reports showing the interest earned and the principal amounts contributed in each case shall be made available to litigants and counsel.

(d) Order for Payment. Payment of funds from any funds deposited pursuant to this Local Rule shall be by order of the court only. The form of order submitted shall contain the names of the parties to whom funds are to be paid and the amounts to be paid. After entry of an

order for disbursement, the parties to whom funds are to be disbursed shall provide to the financial deputy their tax identification numbers or social security numbers and complete any forms required by the Internal Revenue Service for the reporting of earned interest. Disbursements may not be made until this information and the required Internal Revenue Service forms are submitted to the financial deputy.

(e) Deduction of Fees. A registry fee is deducted from the income earned on the deposit of registry funds, based on rates published by the Director of the Administrative Office of the United States Courts, as approved by the Judicial Conference of the United States.

(f) Cash Bonds. Cash bonds posted with the court shall be deposited into the Registry Account of the court and the clerk is directed to use the Court Registry Investment System (CRIS), unless otherwise ordered by the court.

Committee Notes 2012: LR is revised to change procedures for investing court registry funds from directing the clerk to invest with financial institutions to directing the clerk to deposit funds with the Court Registry Investment System (CRIS), administered by the Administrative Office of United States Courts. Thus, subsections (b), (c), (e), and (f) have been revised to reference and explain procedures for depositing court registry funds with CRIS. The revised LR applies to new registry funds deposited with the court on or after June 1, 2012.

Committee Notes 2007: Subsection (a) clearly state long standing requirement of a court order for deposit of funds into the court registry. Former subsection (d) requirement that counsel serve a copy of an order depositing into or withdrawing from the court registry on the clerk and certain deputy clerks is withdrawn as the orders are now readily available on CM/ECF.

Rule 6004-1. Sales Not In The Ordinary Course Of Business

(a) Notice. The notice of a sale not in the ordinary course of business of property in excess of \$2,500.00 shall as applicable, at a minimum, set forth:

- (1)** The time and place of sale;
- (2)** The name or representative's name of the prospective buyer and whether the prospective buyer is an insider;
- (3)** A description of the property or interest to be sold in reasonable detail;
- (4)** All entities known or believed to hold interests, in the property to be sold;
- (5)** Whether the sale is free and clear of liens, claims or interests, or subject to them, and a description of any such liens, claims or interests;
- (6)** The terms and conditions of the offer;
- (7)** Whether the property may be viewed, and if so, when and where;
- (8)** Whether the offer is subject to higher and better bids;
- (9)** The date by which the objections must be filed and served;

- (10) Whether any compensation will be paid from the sale proceeds, if so, to whom and whether such recipient is an insider;
- (11) Whether there is an appraisal of the property, and if so, the value of the property stated therein; and
- (12) Whether any motions for stay relief have been filed as to this property and by whom.

(b) Service. The notice shall be filed and served, with the application, on those specified in Rule 6004, and on other entities known or believed to be interested, including potential buyers and/or their brokers, the title company where escrow has been opened, and any parties asserting liens, claims or interests in the property and their counsel. A certificate of service shall be filed by applicant prior to the hearing.

Related Bankruptcy Code Sections: 102, 363

Related Bankruptcy Rules: 6004, 2002(a)(2), (c)(1), (i) and (k) -- and 9014.

Committee Notes 2007: Changes to Rule 6004-1 were made to conform more closely with the Bankruptcy Code and Rules. For instance, the list of items required in the notice in subsection (a) are required only for sales in excess of \$2,500.00. In addition, the notice (in subsection b) was updated to conform with the new electronic filing system. The subsection (c) requiring a certificate of service is also new and is meant to assist the court in evaluating and determining adequacy of notice.

Rule 6006-1. Executory Contracts and Unexpired Leases

(a) Rejection. A motion for rejection of an executory contract or unexpired lease shall include:

- (1)** The date of the contract or lease;
- (2)** The names of all entities known to movant to claim or to have claimed an interest on the contract or lease, including the original parties, assignees, sublessors, sublessees and parties holding a security interest therein or in the subject property;
- (3)** The subject matter and essential terms of the contract or lease, including (i) if a real property lease, the location (including the street address, legal description and assessor's parcel number if known), or (ii) if a personal property lease, a description of the items of personal property;
- (4)** The balance of any payments or other performance required to be paid or performed under the contract or lease; and
- (5)** The reasons for the relief requested.

(b) Assumption. A motion for assumption of an executory contract or unexpired lease shall include:

- (1)** The items listed in paragraph (a) above;
- (2)** If there has been a default, how the movant will cure or provide adequate assurance that the movant will promptly cure such default;
- (3)** How the movant will compensate, or provide adequate assurance that the movant will promptly compensate, a party other than the debtor for any actual pecuniary loss to such party resulting from such default; and
- (4)** How adequate assurance of future performance will be provided.

(c) Assignment. A motion to assign, whether or not included with a motion to assume, shall also include:

- (1)** The name of the proposed assignee and essential terms of the assignment;
- (2)** How adequate assurance of future performance will be provided, whether or not there has been a default;
- (3)** Whether the proposed assignment is subject to higher and better bids; and
- (4)** Whether any disbursements will be paid from any proceeds received and, if so, to whom and whether such recipient is an insider.

(d) Form of Notice. The notice of motion shall set forth those items listed in paragraph (a) (1) or, if applicable, paragraph (a) (2) and (a) (3) above and shall provide that if no objection is served on movant and filed within 14 days of service, the motion may be granted.

(e) Service.

(1) The Motion. The motion shall be served upon those parties listed in paragraph (a) (2) above.

(2) The Notice of Motion. Notice of the motion shall be served upon:

(A) Those parties listed in paragraph (a)(2) above;

(B) The United States Trustee;

(C) If appropriate, the attorney for any case trustee or, if not represented by an attorney, upon the case trustee;

(D) If appropriate, the attorney for the debtor or, if not represented by an attorney, upon the debtor;

(E) In chapter 11 cases, the twenty largest unsecured creditors listed by the debtor;

(F) The attorney for any committee appointed under the Code;

(G) Any proposed assignee;

(H) Any party requesting notice; and

(I) Any other person or entity upon whom service is required by law or the court.

(f) Entry of Order.

(1) Lack of Objection. If, after filing a motion to assume, reject or assign, an objection is not timely filed and served, a proposed form of order may be lodged and served with a certificate of service and of no objection, which certification may not be made until expiration of 3 days after the last day for objection.

(2) Service of Certifications and Proposed Orders. Certifications and proposed orders shall be served upon the parties listed in paragraph (e) (2) above.

(3) Objections. If a timely objection is filed and served, the moving party shall obtain a hearing date from the court and file a notice of hearing, serve it on the objecting party and on other interested parties and file a certificate of service prior to the hearing.

(g) Expiration of the Time to Assume. If a lease or executory contract is deemed rejected by virtue of the expiration of the applicable period of assumption, any party to the lease or contract may lodge with the court an order confirming the rejection of such lease or contract, together with a motion stating that the time for assumption has expired and that no motion to assume or to extend the time to assume has been filed and is pending. Such motion and form of order shall be served upon those parties listed in paragraph (a)(2) above.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: The substance of the rule did not change. One change to subsection (e) was made to reflect current practice in the bankruptcy court, which is that upon an objection to a motion under this rule, the moving party is responsible to request and notice a hearing and serve same on the objecting party and file a certificate of service.

Rule 6007-1. Abandonment of Property

(a) Definitions. For purpose of this Local Rule, the term “trustee” does not include a “debtor in possession”.

(b) Procedure.

- (1) Notice of Intent to Abandon.** A case trustee or debtor in possession who desires to abandon property of the estate may seek to do so by a notice of intent to abandon, without necessity for filing a motion to abandon.
- (2) Motion to Compel Abandonment.** A party in interest who seeks to compel the case trustee or debtor in possession to abandon property of the estate shall do so by motion.

(c) Notice.

- (1) By Trustee.** A trustee’s notice of intent to abandon shall be served by the clerk.
- (2) By Debtor in Possession.** A debtor in possession’s notice of intent to abandon shall be served by the debtor in possession.
- (3) By Movant.** Notice of a party in interest’s motion to compel abandonment shall be prepared and served by the movant.
- (4) Contents.** The notice of intent or motion shall briefly describe the nature or type of property to be abandoned, including the address of the property if applicable, and the basis upon which the case trustee, debtor in possession or movant concludes that the property is burdensome to the estate or that it is of inconsequential value and benefit to the estate.
- (5) Parties to be Served.** The notice shall be served on those listed in Rule 6007(a).

(d) Objections. Objections must be filed with the court and served upon the person(s) specified in the notice, within 14 days of service of the notice.

(e) Hearings. Unless a timely objection is filed, a notice of intention or motion to abandon property shall not be set for hearing unless otherwise ordered by the court.

(f) Orders.

- (1) If No Objection is Filed and Served.** If no timely objection to a notice of intent or motion to abandon is filed and served, the property is deemed abandoned without further order of the court unless the court otherwise directs. If an entity desires an order of the court authorizing or directing, and confirming, the case trustee's or debtor in possession's abandonment of the property, that entity may submit to the court a proposed form of order, together with a certificate which recites (A) the circumstances of compliance with the notice requirements of Rule 6007 and this Local Rule, (B) that the time for objection has expired, and (C) that no objection has been filed and served, and 3 days has passed since the last day for objections. If the proposed form of order has been approved as to form by the case trustee or debtor in possession, it may be signed and entered forthwith. Otherwise, it shall be lodged and a copy thereof shall be served on the case trustee and debtor in possession.
- (2) If Objection is Filed.** If a timely objection is filed, the party requesting the abandonment shall obtain a hearing date from the court and file a notice of hearing, and serve said notice on the objecting party and also prepare and file a certificate of service prior to the hearing.
- (3)** If the party submitting a certificate pursuant to paragraph (f) (1) has actual knowledge that an objection has been filed or served, but was untimely, the certificate should so state.

Related Code and Rules: 11 U.S.C. § 554; Rules 6007, 9013, 9014, 3022 and 5009.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: No substantive changes to this rule. Subsection (c)(5) was added to note which parties are to be served. One other change was made -- to subsection (f)(2) -- to reflect current practice in the bankruptcy court, which is that upon an objection to a motion under this rule, the moving party is responsible to request and notice a hearing and serve same on the objecting party and file a certificate of service.

Committee Notes: (from prior rule changes)

(1) This Local Rule implements §554 of the Code and Rule 6007. This Local Rule has no application to dispositions of property pursuant to §363 of the Code or Rules 6004 or 7001(3), which involve the sale or lease of property of the estate.

(2) Rule 2002 and Local Rule 2002-1 should be consulted for general provisions relating to notice.

Rule 6008-1. Redemption

(a) Procedure.

- (1) Motion.** A motion shall be filed for the redemption of property.
- (2) Service.** A motion for order authorizing redemption of property shall be served upon:
 - (A)** Any creditor claiming a lien upon the property to be redeemed;
 - (B)** The case trustee; and
 - (C)** Any other person or entity required by law or the court.
- (3) Entry of Order.** If an objection is not timely filed and served, the proposed form of order shall be lodged and served by movant with a certificate of service and of no objection. The certificate shall not be made until the expiration of 3 days after the last day for objection.

(b) Objection.

- (1)** An objection shall be served and filed within 14 days of service of the notice of motion for order authorizing redemption of property.
- (2)** An objection shall be supported by specific facts and law. Legible copies of all appraisals or summaries thereof currently in the objector's possession or control upon which the objector intends to rely shall be attached.
- (3)** If a timely objection is filed and served, movant shall obtain a hearing date from the court and file a notice of hearing and serve the notice on the objecting party and file a certificate of service with the Court prior to the hearing.

Related Code Section and Rules: 11 U.S.C. § 722 and Rules 1007 and 6008.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: No substantive changes were made to this rule. One change to subsection (b)(3) was made to reflect current practice in the bankruptcy court, which is that upon an objection to a motion under this rule, the moving party is responsible to request and notice a hearing and serve same on the objecting party and file a certificate of service.

Rule 7016-1. Joint Pretrial Statement

(a) Contents of Joint Pretrial Statement. Unless the court orders otherwise, upon the initiative of counsel for the plaintiff or movant, counsel who will try the case and who are authorized to make binding stipulations shall confer and prepare a written pretrial statement, signed by each counsel, to be filed by the plaintiff or movant within the time set by the court or, if no time is set, then not less than seven days prior to the date of trial. Such pretrial statements shall contain the following:

- (1) A brief statement of the nature of the case, including a reference to any particular sections of the Code that are involved;
- (2) The uncontested facts deemed material;
- (3) Such contested issues of fact and law as counsel can agree are material or applicable; as to each such issue (and those identified in paragraph (4) below), the parties shall state their respective positions as to what they want the court to find or conclude;
- (4) A separate statement by each party of other issues of fact or law which that party believes to be material. As to each statement of fact, each opposing party shall state whether it contends that the statement is accurate, material and relevant;
- (5) A list of the witnesses intended to be used by each party during the trial. No witness shall be used at the trial other than those listed, except for good cause shown. The joint pretrial statement must identify those witnesses whose testimony will be received by declaration or deposition testimony, and those witnesses who reside out-of-state but will be testifying live;
- (6) A list of all witness declarations that each party has filed or intends to introduce at trial. Any declaration not previously filed must be attached to the joint pretrial statement. As to each declaration, each opposing party shall indicate whether it may be received in evidence as is, whether it may be received in evidence only on the condition that the declarant is available at trial for cross-examination, or whether the opposing party will require that the witness testify live on direct examination;
- (7) A statement by each party identifying any depositions to be offered at trial and indicating the specific portions to be offered and the party or parties against whom they will be offered;
- (8) Each party's estimate of the time required for trial; and
- (9) A certification by each party that all listed exhibits have been exchanged or made available to all other parties for inspection and copying. Any party that identifies more than ten exhibits shall arrange to have them marked in advance of trial and provide exhibit books for the witness, the court, and opposing counsel. No exhibits shall be used during the trial other than those listed, except for good cause shown.

(b) Draft. Unless otherwise agreed by the parties, counsel for plaintiff or movant will provide a draft of the joint pretrial statement to the other parties no later than one week prior to the deadline for filing the joint pretrial statement. All other parties shall provide input to the drafting party at least one full business day in advance of the deadline for the joint pretrial statement. If the plaintiff or movant is appearing pro per and another party is represented by counsel, counsel shall timely prepare and distribute the first draft of the joint pretrial statement.

(c) Unilateral Pretrial Statement. Any party who does not cooperate in a timely manner in preparing the joint pretrial statement may be precluded from calling any witnesses or submitting any exhibits at trial. If a party does not cooperate, any other party may file a unilateral pretrial statement by the deadline, together with a motion for authority to file a unilateral

statement, explaining the details of the other party's lack of cooperation, including dates when drafts were distributed, and shall lodge an appropriate form of order granting the motion.

(d) Unrepresented Parties. Any party that is not represented by counsel shall be responsible for complying with the requirements of this Local Rule, and any reference in this Local Rule to counsel for such party shall be deemed to refer to such party.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 7054-1. Costs - Taxation

(a) Cost Statement. A party allowed costs shall, within 14 days after entry of the judgment unless the time is extended by motion filed prior to the expiration of the 14 days, file with the clerk and serve upon all adverse parties, a cost statement together with a notice of application to have the costs taxed and a proposed form of taxation of costs. The cost statement shall include a memorandum of the costs and shall be verified.

(b) Objections. Unless the clerk otherwise directs, the notice of application to have costs taxed shall give adverse parties notice that they have 14 days to file and serve on the party who seeks costs, any objections to the cost statement. Any evidence supporting the objection shall be attached thereto. Thereafter, the clerk shall tax the costs.

(c) Clerk Taxation. The clerk will not tax costs unless the judgment allows costs.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 8001-1. District Court Appellate Rules

For local rules governing appeals to District Court, see the Local Rules of Practice of the District Court for the District of Arizona.

Rule 9001-1. Definitions

The following words have the following meanings for purposes of these Local Rules of Bankruptcy Procedure:

(a) "Bankruptcy Court" means the United States Bankruptcy Court for the District of Arizona.

(b) "Bankruptcy Court Clerk" means the Clerk of the Bankruptcy Court.

(c) "BAP" means the United States Bankruptcy Appellate Panel of the Ninth Circuit.

(d) "Clerk" or "District Court Clerk" means the Clerk of the Court.

(e) "Court" means the United States District Court for the District of Arizona.

(f) “FRBP” means the Federal Rules of Bankruptcy Procedure.

(g) “FRAP” means the Federal Rules of Appellate Procedure.

(h) “Local Bankruptcy Court Rules” means the Local Rules of Bankruptcy Procedure for the District of Arizona, as adopted by the bankruptcy judges for this District for cases and proceedings pending before the Bankruptcy Court.

(i) “Local Rules of Bankruptcy Procedure” means these Local Rules of Bankruptcy Procedure for Cases, Proceedings, and Appeals pending before the United States District Court for the District of Arizona, as adopted by the District Judges for this District.

Committee Notes 2007: New rule. Proposed Rule 9001-1 is similar to 9th Cir. BAP Rule 9001-1, but includes different and additional definitions.

Rule 9004-1. Papers – Caption and Form, General

(a) **Caption.** The caption of each document filed, other than the petition, unless otherwise specified in this Local Rule, shall include the title of the court as set forth in Local Rule 1005-1, the name of the debtor, the chapter of the case, the bankruptcy case number in the form required by Local Rule 1005-1 and a brief designation of the nature of the relief requested.

(b) **Adversary Proceedings, Contested Matters or Certain Motions.** No documents, pleadings or motions other than those specified in these Local Rules shall be dual captioned. The caption of an adversary complaint and all other documents filed in an adversary proceeding shall be dual captioned. The first caption shall include the debtor's name. The second caption shall include the names of the plaintiffs and defendants. The caption shall also include the chapter, the bankruptcy case number and the adversary proceeding number, once assigned. The caption of a motion to vacate the stay and all subsequent pleadings related to the motion shall be dual captioned. The first caption shall include the debtor's name, case number, and the chapter under which the debtor filed. The second caption shall include the name of the movant and the respondent.

(c) **Jointly Administered or Substantively Consolidated Cases.** Unless otherwise ordered, after the entry of an order for joint administration or substantive consolidation of two or more bankruptcy cases, all documents filed shall be jointly captioned to include the debtors' names and the case numbers of all the cases ordered jointly administered or substantively consolidated. The caption shall include whether the cases are jointly administered or substantively consolidated. All documents shall be filed and docketed in only the lowest numbered case. The caption shall identify the jointly administered case or cases to which the filing relates.

(d) **Date and Time of Hearing.** The caption shall include the date, time and place of the hearing if known. This information shall be placed to the right of the caption name and beneath the case number.

(e) **Proposed Orders.** Proposed orders shall be prepared as a separate document containing the appropriate caption required by this Local Rule and shall not be included as part of stipulations, motions or other pleadings.

(f) Amended Pleadings. Any party filing an amended pleading may incorporate, unless otherwise ordered by the court, any part of the preceding pleading, including the exhibits, by reference.

(g) Form of Papers. All pleadings, motions and other papers shall identify in the caption the nature of the relief sought. All pleadings and other papers shall be formatted for paper 8½ inches by 11 inches and shall be signed as provided in FRBP Rule 11 or Local Rule 5005-2(f). The body of all documents shall be typed double-spaced and shall not exceed 28 lines per page; they shall not be single-spaced except for footnotes and indented quotations. All pleadings, motions and other papers shall be in a fixed-pitch type size no smaller than ten (10) pitch or in a proportional font size no smaller than 12 point, except that footnotes may be 11 point. The left margin shall be not less than 1½ inches and the right margin shall be not less than ½ inch.

Rule 9009-1. Forms

(a) Unless specifically identified in the Local Rules as being a mandatory form, a form provided in these Local Rules is for convenience of the parties.

(b) Upon request, the clerk shall provide, without cost, any of the required Local Forms, and such Local Forms may be found on the court's website. All forms may be duplicated by the user as needed.

Rule 9010-1. Attorneys

(a) Attorney of Record. An attorney who has appeared on behalf of a party in the administrative portion of a case or in an adversary proceeding becomes the attorney of record for the party, including if the case is converted to another chapter. However, an attorney representing a debtor in the administrative portion of the case is not deemed to represent the debtor in an adversary proceeding, unless the attorney enters an appearance in the adversary proceeding. An attorney of record shall remain such until the time for appeal of any judgment has expired or any such judgment has become final, the case has been closed or dismissed, or the court has entered a formal order of withdrawal or substitution in the case.

(b) Withdrawal and Substitution. No attorney shall seek withdrawal or substitution as attorney of record in any pending case or proceeding except by written application. Unless the Rules require otherwise, the application shall contain at a minimum: (1) the name, address and telephone number of the substituting attorney, and such attorney's approval; or (2) if no substituting attorney exists, the client's name, last known address and telephone number, and a certificate of the attorney that the client has been notified in writing of the status of the case, including the dates and time of any court hearings or trial settings and the need to comply with any existing court orders, discovery requests and the possibility of sanctions for the failure to comply. The application shall be presented to the court, may be considered without a hearing, and shall be accompanied by a proposed order containing the name, address and telephone number of the person to whom subsequent pleadings shall be sent.

(c) Notice. Prompt notice of any withdrawal or substitution order shall be given to all interested parties in any case, adversary proceeding, or contested matter in which the withdrawing attorney has appeared.

(d) Under Advisement Matters. Whenever any motion or other matter (such as a decision in a bench trial) has been taken under advisement by the court for more than 60 days, the attorneys of record in the matter, or any party affected by the undecided matter, may inquire

of the court, in writing, as to the status of the matter, and may do so every 30 days thereafter until the submitted matter has been decided.

Rule 9011-1. Attorneys – Ethical Obligations

Without limiting the effect of an attorney's ethical responsibility under the Code, the Rules, and any case law, the "Rules of Professional Conduct," as set forth in Rule 42 of the Rules of the Supreme Court of the State of Arizona, shall apply to attorneys who file any pleading or document or who are heard in any matter before the court.

Rule 9013-1. Motion Practice

For purposes of these Local Rules, a request for an order, including a motion, application or other pleading (all of the foregoing will be referred to in this Local Rule as a "motion") shall be governed by the following requirements.

(a) Motions. All motions, unless made in open court, shall include a memorandum setting forth the points and authorities relied upon in support of the motion.

(b) Length of Motions and Memoranda. Unless otherwise permitted by the court, a motion and the supporting memorandum shall not exceed 15 pages, exclusive of attachments.

(c) Response and Reply Times for Motions. Unless otherwise set forth in the Rules, the Local Rules, the notice prescribed in paragraph (j) or an order of the court, the party responding to a motion shall have 14 days after service within which to serve and file a responsive memorandum, and the moving party shall have 14 days after service of the responsive memorandum to serve and file a reply.

(d) Unopposed or Ex Parte Motions. Motions that the moving party contends are unopposed or need not be set for hearing shall so state and be accompanied by a separate proposed order granting the relief requested. If the moving party contends that the motion should be granted on an ex parte basis, the motion shall state why it may be granted without notice and shall be accompanied by a form of order.

(e) Discovery Disputes. No motion concerning discovery disputes will be considered unless a statement of the moving party or its counsel, if represented, is attached certifying that after personal consultation and sincere efforts to do so, the parties have been unable to resolve the matter.

(f) Motions to Compel. When a motion for an order compelling discovery is brought, in addition to the requirements set forth in paragraph (e) above, the moving party shall set forth the following in separate, distinct, numbered paragraphs:

- (1)** The questions propounded, the interrogatory submitted, the designation requested or the inspection requested;
- (2)** The answer, designation or response received; and
- (3)** The reason(s) why said answer, designation or response is deficient.

The foregoing requirements shall not apply where there has been a complete failure to respond to a discovery request.

(g) Motions for Summary Judgment. Any motion for summary judgment shall set forth separately from the memorandum of law, and in full, the specific facts upon which the moving party relies in support of the motion. The specific facts shall be set forth in serial fashion, not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (i.e., affidavit, deposition, etc.). Any party opposing summary judgment must comply with the foregoing in setting forth the specific facts relied upon in opposing the motion or that otherwise establish that a genuine issue of material fact exists that precludes summary judgment. In the alternative, the moving party and the opponent shall jointly file a stipulation setting forth a statement of the stipulated facts, if the parties agree that there is no genuine issue of material fact. As to any stipulated facts, the parties may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not to be otherwise binding. Unless otherwise set forth in the Rules, the Local Rules, or an order of the court, and notwithstanding the provisions of paragraph (c) above, the party opposing or responding to a motion for summary judgment shall have 30 days after service within which to serve and file a responsive memorandum and the moving party shall have 14 days after service of the responsive memorandum to serve and file a reply.

(h) Accelerated Hearings. Motions to accelerate hearings or reduce notice periods are disfavored and should not result from delay or inadvertence by the moving party or its counsel. The procedure for requesting such relief shall be governed by the following requirements.

- (1)** The moving party shall make every practicable effort to notify opposing parties, if any, and shall serve the pleadings at the earliest possible time and by the most expeditious means practicable.
- (2)** The request for relief shall be a separate motion and bear a caption such as "Motion for Accelerated Hearing" or "Motion to Reduce Notice Period." A proposed order granting the relief requested shall be lodged with the motion.
- (3)** Such motion shall contain:
 - (A)** The telephone numbers, fax numbers, e-mail addresses and office addresses of the attorneys for the opposing parties;
 - (B)** Facts showing the existence and nature of the claimed emergency; and
 - (C)** When and how counsel for the opposing parties were notified and whether they have been served with the motion, or, if not notified and served, why that was not done.

(i) Motions for Continuance or Extensions of Time. Requests for continuance of hearings or extensions of time as to briefing schedules or other matters shall state whether any other party objects to the request, or why the moving party has been unable to determine the other party's position.

(j) Notice for Motion Requiring a Hearing. For any motion that requires a hearing, it shall be the responsibility of the moving party to obtain from the court the date, time and location of the hearing and to provide notice thereof to all interested parties in substantially the following format:

- (1) In addition to the date, time and location of the hearing, the notice shall specify the details of the requested relief, the deadline for any response or objection, and the requirement that any response or objection be filed with the court and served on the moving party.
- (2) The notice may state that the court may vacate the hearing and grant the requested relief if no timely objection is served and filed.
- (3) The moving party shall serve the notice as required by the Rules, Local Rules, or order of the court and file a certificate or affidavit of service.
- (4) If a bar date notice has been utilized and an objection has been filed with the court or received by the moving party, the moving party shall serve on the objecting party or parties an abbreviated form of notice that states the date, time and location of the hearing, and shall file a certificate or affidavit of service.

(k) Negative Notice. In addition to the bar date procedures established by these Local Rules, unless the court orders otherwise, the moving party may use a 21 day bar date notice for all:

- (1) Motions to approve § 363 sales other than real property, and other than pursuant to Code §363(h);
- (2) Motions to approve compromises and settlements pursuant to Bankruptcy Rule 9019, except where a party to the settlement is not represented by counsel;
- (3) Applications for professional fees;
- (4) Objections to exemptions claimed by the debtor;
- (5) Motions by debtors to sell or refinance homestead property; and,
- (6) Motions to set a claims bar date in a chapter 11 case.

The moving party must serve a detailed notice of the motion on all parties entitled to notice, clearly stating the requirement to respond within the time allowed, and must file a certificate of service. Upon expiration of the time stated, plus an additional three days, and provided that no objections have been filed, the moving party may file a certificate of service and of no objection and lodge an appropriate order granting the relief requested. The lodged order must conform to the relief requested in the motion. If an objection is filed, the movant must obtain a hearing date, serve notice on all parties entitled to notice and file a certificate of service.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 9014-1. Applicability of Federal Rules

Unless the Court otherwise directs, the Federal Rules of Civil Procedure, as they may be amended from time to time, shall apply to adversary proceedings, contested matters and contested involuntary petitions in this District to the extent made applicable by the Federal Rules of Bankruptcy Procedure. A Federal Rule of Civil Procedure that is not otherwise applicable shall not be deemed applicable simply because it is referred to in an applicable Rule.

Committee Notes 2007: This Rule is derived from former General Order 81, which governed the applicability of the Federal Rules of Civil Procedure in bankruptcy proceedings. The General Order had become outdated because the 2004 amendments to Bankruptcy Rule 9014(c) now expressly exclude Federal Rules 26(a)(1), 26(a)(2), 26(a)(3) and 26(f) from contested matters.

Rule 9014-2. Hearings on Contested Matters

(a) Initial Hearing without Live Testimony. Pursuant to Bankruptcy Rule 9014(e), all hearings scheduled on contested matters will be conducted without live testimony except as otherwise ordered by the court. If, at such hearing, the court determines that there is a material factual dispute, the court will schedule a continued hearing at which live testimony will be admitted.

(b) Request for Live Testimony.

- (1)** Any party filing a motion, application, or objection who reasonably anticipates that its resolution will require live testimony may file an accompanying motion for an evidentiary hearing, stating:
 - (A)** The estimated time required for receipt of all evidence, including live testimony;
 - (B)** When the parties will be ready to present such evidence;
 - (C)** The estimated time required to complete all formal and informal discovery;
 - (D)** Whether a Bankruptcy Rule 7016 Scheduling Conference should be held; and,
 - (E)** Whether any party who may participate at the evidentiary hearing is appearing pro se.
- (2)** The party requesting an evidentiary hearing shall accompany the motion with a form of order.
- (3)** Any response to a motion for an evidentiary hearing shall be served and filed within seven days of service of the motion. The time computation and enlargement provisions of Rule 9006 shall not apply to the response deadline, except that the responding party shall have an additional 3 days to respond if the motion is served by mail.
- (4)** Based upon the motion and any responses, the court will either finalize the order setting the matter for hearing or request that the parties appear for a Bankruptcy Rule 7016 Scheduling Conference.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: This Rule is derived from former General Order 86.

Rule 9022-1. Judgments or Orders

(a) Submission of Proposed Judgments or Orders. Proposed Judgments or Orders shall be electronically submitted to the court by attorneys and case trustees using Order Upload in the ECF System.

(b) Notice of Lodging Judgment or Order. Immediately after electronically submitting the proposed judgment or order into the ECF system, the submitting attorney or case trustee shall also electronically file on the case docket a Notice of Lodging the Judgment or Order with the proposed judgment or order attached.

(c) Service of Judgment or Order by Clerk. The clerk is authorized to serve on those parties, who have consented to service by electronic means, the notice of entry of an order or judgment by service of the “Notice of Electronic Filing” generated on the entry of the order or judgment. For such electronic service to be accomplished by the court’s ECF system server, the consenting party must enable the ECF system provided e-mail notification so that such service can be made. Such electronic service will be noted on the docket when the docket report is generated which includes the links to the “Notices of Electronic Filing.”

Committee Notes 2007: Paragraph one and three incorporate requirements of ECF Interim Operating Order No. 8. Paragraph two is a new requirement that will provide notice of the uploading of a proposed order or judgment.

Rule 9027-1. Removal and Remand

(a) Notice of Removal of Litigation. A notice of removal of litigation pending in a court in Arizona shall be filed with the bankruptcy court clerk's office in the division where the removed litigation is pending.

(b) Remand. A motion for remand of the litigation removed under subsection (a) shall be filed with the bankruptcy court clerk's office in the division where the removed litigation is pending and shall be heard by the court.

(c) Filing of Pleadings. Unless otherwise ordered by the court, the party filing the notice of removal shall file with the clerk, in chronological order, copies of all process, pleadings (as narrowly defined by F.R.Civ.P. Rule 7(a)), and minute entries and orders filed in the litigation prior to removal plus, if available, a copy of the docket for the removed litigation from the court where the removed litigation is pending. In addition, the party filing the notice of removal shall file a copy of any motion that was pending at the time of removal, together with any related response and reply. Each such document shall be filed separately. Instead of exact, scanned copies of what had been filed, the removing party may re-create from word processing format identical new PDF-format documents for filing electronically. All such documents shall be filed within the later of:

- (1) 30 days after filing a notice of removal under subsection (a), or;
- (2) if a motion to remand is filed prior to the expiration of such 30-day period, 14 days after entry of an order denying such a motion to remand.

(d) Notice of Pending Motion. Any party seeking a ruling on a motion that was pending at the time of removal shall file with the court a Notice of Pending Motion and Request for Hearing. The Notice shall identify the motion by name and its new docket number in the bankruptcy court's docket; describe the status of briefing on the motion; and state when a hearing should be scheduled for it to be heard. Unless otherwise ordered by the court, removal shall not otherwise affect the time to respond or reply to a motion filed prior to removal.

(e) Jury Trial Demand. Within 14 days of service of the notice of removal, a party must comply with Bankr. Rule 9015 to preserve any right to a trial by jury

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Committee Notes 2007: Subsection (c) was added to make the procedure under Local Rule 9027-1 comport with ECF filing practices so that all pleadings in the removed action will be accessible on the ECF system rather than just those filed post-removal. The 30-day deadline in subsection (c)(i) was chosen based on the assumption that most remand motions will be filed within 30 days after a notice of removal. If a motion to remand is filed within that 30-day period, subsection (c)(ii) makes it unnecessary to file pre-removal pleadings unless and until the motion is adjudicated in a way that keeps the removed litigation in the bankruptcy court. Where the pre-removal pleadings are voluminous, or where other exceptional circumstances justify deviating from the specified procedure and timelines, the "unless otherwise ordered by the Court" clause at the beginning of subsection (c) allows the Court the discretion to grant the relief it deems appropriate. Subsections (d) and (e) are intended to adopt similar procedural rules to those adopted by the Local Rules of the District Court for the District of Arizona for removal of state court actions to that court.

Rule 9071-1. Stipulations of Counsel

(a) Written. Stipulations of counsel or parties relating to the business of the court, other than stipulations made on the record in open court, shall be contemporaneously memorialized in writing and signed by and transmitted to all affected parties and counsel.

(b) Binding Effect. No stipulation between parties or counsel relating to the business of the court shall be binding on the court until approved by the court. Stipulations made in compliance with paragraph (a) above shall be binding on the participating parties and counsel until disapproved by the court or overruled by court order. Except as provided by law, the court may refuse to consider parole evidence of any stipulation not made in compliance with paragraph (a) above.

PROCEDURES GOVERNING ALTERNATIVE DISPUTE RESOLUTION MATTERS IN BANKRUPTCY CASES

Rule 9072-1. Purpose and Scope

(a) ADR Program. Litigation in bankruptcy cases frequently imposes significant economic and other burdens on parties and often delays resolution of disputes. Alternative Dispute Resolution ("ADR") procedures have the potential to reduce delay, cost, stress and other burdens often associated with bankruptcy and bankruptcy related litigation. Mediation, in particular, allows parties more active involvement in determining the resolution of their disputes. To provide a court-annexed ADR procedure, the court adopts Local Rules 9072-1 through 9072-9 creating an ADR Program for the District of Arizona (the "ADR Program").

(b) ADR Methods. It is the court's intention that the ADR Program shall operate in such a way as to allow the participants to take advantage of and utilize a wide variety of ADR methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation, and settlement facilitation. The specific method or methods employed will be those that are appropriate and applicable as determined by the mediator and the parties, or as directed by the court and will vary from matter to matter. Nothing contained herein is intended to preclude other forms of ADR with the consent of the parties.

Rule 9072-2. Assignment of Matters to ADR

The court may assign a matter for inclusion in the ADR Program sua sponte, upon written stipulation of the parties to the matter, or on motion of a party to the matter or the United States Trustee. While participation by the parties in the ADR Program is generally intended to be voluntary, the court may designate specific matters for inclusion in the ADR Program, or the United States Trustee, the court may order additional parties to participate in the ADR Program if the participation of the additional parties would be necessary or helpful.

Rule 9072-3. Types of Matters Subject to ADR

Unless otherwise ordered by the court, all controversies arising in an adversary proceeding, contested matter, or other dispute in a case are eligible for referral to the ADR Program.

Rule 9072-4. Effect of ADR on Pending Matters

The assignment of a matter to the ADR Program does not relieve the parties to that matter from complying with any other court orders or applicable provisions of the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the local bankruptcy rules of this Court. Unless otherwise ordered by the Court, the assignment of this matter to the ADR Program does not delay or stay discovery, pretrial, hearing dates, or trial schedules.

Rule 9072-5. Panel of Mediators/ADR Program Administrator

The clerk shall establish and maintain two lists of attorneys and panel trustees (the "Panel") qualified under Local Rule 9072-6 and approved by the court to serve as mediators in the ADR Program. The Chief Bankruptcy Judge shall appoint a judge of this court, who is willing, to serve as the ADR Program Administrator (the "ADR Program Administrator"). Aided by staff members of the court, the ADR Program Administrator shall receive applications for approval to the Panel,

track and compile reports on the ADR Program, and otherwise administer the ADR Program and handle such other administrative duties as are necessary.

Rule 9072-6. Application and Certification of Mediators

(a) Application and Qualification Requirements. Each attorney or panel trustee applying for approval to the Panel must submit to the ADR Program Administrator the Application Form which can be obtained from the court's website. Except as otherwise determined by the court, to be approved as a mediator in the ADR Program, each applicant must meet the following criteria:

- (1)** if the applicant is an attorney, be a member in good standing of the bar of any state or the District of Columbia, with at least five years of practice; or
- (2)** if the applicant is an attorney, be a member in good standing of the bar of the Federal District Court of Arizona, with at least five years of practice; or
- (3)** if the applicant is a panel trustee, be an active panel trustee in good standing with the office of the United States Trustee with at least five years of service as a panel trustee, or if retired, have been a panel trustee in good standing with the; office of the United States Trustee with at least five years of service as a panel trustee;
- (4)** not have been suspended, or have had a professional license or bond revoked, or have pending any proceeding to suspend or revoke such license or bond;
- (5)** not have resigned from a professional organization or panel while an investigation was pending into allegations of misconduct which would warrant suspension, disbarment or professional license or bond revocation;
- (6)** not have been convicted of a felony;
- (7)** have completed appropriate mediation training, or have sufficient experience, in the mediation process;
- (8)** be determined by the court to be competent to perform the duties of a mediator; and
- (9)** be willing to serve as mediator in at least one matter during each quarter of each year, subject only to unavailability due to conflicts, personal or professional commitments, or other matters which would make such service inappropriate.

(b) Term. Mediators shall serve as members of the Panel for a term of three (3) years unless the mediator is advised otherwise by the court or submits a written request to withdraw from the Panel to the ADR Program Administrator. Reappointment will occur at the court's discretion, and an application for reappointment shall not be required. A mediator assigned to act as a mediator in a matter before expiration of his or her term shall continue said service until the mediation is concluded regardless of term expiration.

(c) Court Certification. The court, in its sole discretion, shall grant or deny an application submitted pursuant to Local Rule 9072-6. If the court grants the application, the applicant's name shall be added to the Panel, subject to removal pursuant to Local Rule 9072-6(f).

(d) Reaffirmation of Qualifications. Each applicant approved for designation to the Panel shall reaffirm annually the continued existence and accuracy of the qualifications, statements, and representations made in the application. Failure to comply with this section shall be grounds for removal under Local Rule 9072-6(f).

(e) Mediator's Oath. Before serving as a mediator, each person designated to the Panel as a mediator shall take the following oath or affirmation:

"I, _____, do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a Mediator in the ADR Program of the United States Bankruptcy Court for the District of Arizona with equal respect to all persons regardless of race, religion, gender, ethnicity, or economic status . So help me God."

(f) Removal from Panel. A person shall be removed from the Panel either at the person's request or by court order. If removed by court order, the person shall not be returned to the Panel absent a court order obtained on motion to the ADR Program Administrator, supported by an affidavit sufficiently explaining the circumstances of such removal and the reasons justifying the return of the person to the panel.

Rule 9072-7. Appointment of Mediator

(a) Selection and Appointment of Mediator.

(1) Selection by Parties. Unless otherwise ordered by the court, within seven days following the receipt of notice of assignment of a matter to the ADR Program, the parties to the matter shall select a mediator and an alternate mediator, and shall present the court with a proposed order of appointment. If such selection is not from the Panel, the parties shall submit with the proposed order of appointment a stipulation by the parties that the proposed mediator is not on the Panel but is otherwise qualified under Local Rule 9072-6 to mediate the matter. If the court, in its sole discretion approves the parties' selection, immediately after entry of the order of appointment, the court shall notify the parties, the mediator, and the alternative mediator of the appointment.

(2) Selection/Appointment by Court. If the parties cannot agree upon a mediator within 14 days following the receipt of notice of assignment of a matter to the ADR Program, the parties shall notify the court; thereupon, the court shall appoint a mediator and an alternative mediator from the Panel, and shall notify in writing the parties, the mediator, and the alternative mediator of such appointment.

(b) Inability of Mediator to Serve. If the mediator is unable to serve, the mediator shall, within seven days after receipt of notice of the appointment, file and serve on all parties to the matter, and on the alternate mediator a notice of inability to accept the appointment. If the alternate mediator does not file and serve on all parties to the mediation a notice of inability to accept the appointment within seven days after receipt of the original mediator's notice of inability to accept the appointment, the alternate mediator shall then become the mediator. If neither the

mediator nor the alternate mediator can serve, the court shall appoint another mediator and alternative mediator.

(c) Disqualification of Mediator.

- (1) Disqualifying Events.** Any person selected as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. § 455. Any person selected as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a judge.
- (2) Inquiry by Mediator; Disclosure.** Promptly after receiving notice of appointment, the mediator shall make inquiry sufficient to determine whether there is a basis for disqualification under Local Rule 9072-7(c)(1). The inquiry shall include, but not be limited to, a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorney mediators, and by the applicable rules pertaining to the mediator's profession for non-attorney mediators. Within seven days after receiving notice of appointment, the mediator shall file with the court and serve on the parties to the mediation either (a) a statement that there is no basis for disqualification under Local Rule 9072-7(c)(1) and that the mediator has no actual or potential conflict of interest or (b) a notice of withdrawal.
- (3) Objection Based on Conflict of Interest.** A party to the mediation who believes that the assigned mediator and/or the alternate mediator has a conflict of interest, promptly shall bring the issue to the attention of the mediator and/or the alternate mediator, as applicable, and to the other parties to the mediation. If the mediator does not voluntarily withdraw, the issue shall be brought to the court's attention by the mediator or any of the parties to the mediation. Any pleading shall be filed with the court, and copies of the pleading shall be mailed to all of the parties to the mediation, their counsel of record, if any, the mediator, the alternative mediator, and the ADR Program Administrator. The court shall take such action as the court deems necessary or appropriate to resolve the alleged conflict of interest and to avoid the appearance of impropriety.

(d) Mediator's Liability. There shall be no liability on the part of, and no cause of action shall arise against, any person who is appointed as a mediator on account of any act or omission in the course and scope of such person's duties as a mediator.

(e) Compensation.

- (1) Compensated Mediation.** Mediators who meet the requirements of Local Rule 9072-6 shall be paid fees and expenses on such terms as the mediator and the parties to the mediation may agree or as the court otherwise may direct. The parties to the mediation shall share equally all ADR fees and expenses unless the parties to the mediation agree otherwise. The court may, in the interest of justice, determine a different allocation or a different fee structure. ADR fees and expenses are subject to prior court approval if the bankruptcy estate is to be charged with any portion. Notwithstanding the foregoing, the mediator's fee, whether agreed to by the parties or fixed by the court, may not be contingent or otherwise based

on the result or outcome of the ADR process. The court shall maintain a list of all mediators who are qualified to be compensated mediators.

- (2) Uncompensated Mediation.** The court shall maintain a list of mediators who have agreed to serve as mediators without compensation in those cases where one or more of the parties can not afford to pay for mediation. Any attorney or panel trustee willing to serve as an uncompensated mediator shall file then Application Form pursuant to Local Rule 9072-6 above and state that they are willing to serve as an uncompensated mediator. To be approved as a uncompensated mediator it is not required that the applicant have completed mediation training.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 9072-8. The Mediation

(a) Initial Telephonic Conference. Promptly, but no later than 14 days of receipt of notification of appointment, the mediator shall conduct a telephone conference with counsel of record for the parties (or the parties, where appearing pro se) to discuss (1) fixing a convenient date and place for the ADR Conference; (2) the procedures that will be followed during the ADR Conference; (3) who shall attend the ADR Conference on behalf of each party; (4) what material or exhibits should be provided to the mediator before the ADR Conference; and (5) any issues or matters that it would be especially helpful to have the parties address in the Submission materials.

(b) Time and Place of ADR Conference. After consulting with all counsel and pro se parties, the mediator shall schedule a convenient time and neutral place for the ADR Conference, and promptly give all counsel and pro se parties at least 14 days advance written notice of the time and place of the ADR Conference. The mediator shall schedule the ADR Conference to begin as soon as practicable after entry of the order of appointment.

(c) Submission Materials. Not less than seven days before the ADR Conference, each party shall submit directly to the mediator, and shall serve on all counsel and pro se parties, an ADR statement (the "Submission"). The Submission shall not be filed with the court and the court shall not have access to the submission of any portion thereof. The Submission may include any information that the parties would consider useful, but must:

- (1)** Identify the person(s), in addition to counsel of record, who will attend the ADR Conference as representative of the party with decision making authority;
- (2)** Describe briefly the nature and scope of the substance of the dispute;
- (3)** Address whether there are legal or factual issues whose early resolution might reduce appreciably the nature and scope of the dispute or significantly contribute to settlement;
- (4)** Identify the discovery that could contribute most to equipping the parties for meaningful settlement discussions;
- (5)** Set forth the history of past settlement discussions, including disclosure of prior and any presently outstanding offers, counteroffers, and demands;

- (6) Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses, and trial;
- (7) Indicate presently scheduled court dates for further status conferences, pretrial conferences, trial, or otherwise; and
- (8) Attach copies of the document(s) from which the dispute has arisen or other relevant documents or information whose availability would materially advance the purposes of the Mediation Conference.

(d) Attendance at ADR Conference.

- (1) **Persons Required to Attend.** The following persons must attend the ADR Conference:
 - (A) Each party who is a natural person;
 - (B) If a party is not a natural person, a representative who is not the party's attorney of record and who has full authority to negotiate and settle the matter on behalf of the party;
 - (C) If the party is a governmental or quasi governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend a settlement to the elected official or legislative body;
 - (D) The attorney who has primary responsibility for each party's case. The attorney shall come prepared to discuss all liability issues, all damage issues, and the position of the party relating to settlement, in detail and good faith; and
 - (E) Other interested parties such as insurers or indemnitors, or one or more of their representatives, whose presence is necessary for a full resolution of the matter assigned to the ADR program.
- (2) **Excuse.** A person required to attend the ADR Conference is excused from appearing if all parties and the mediator agree that the person need not attend the ADR Conference. The court for cause may excuse a person's attendance at the ADR Conference. Any party or attorney who is excused by the mediator from appearing in person at the ADR Conference may be required by the mediator to participate telephonically. Telephonic participation at the ADR Conference should be the exception rather than the rule and shall only be permitted upon good cause shown. This decision is within the mediator's sole discretion.
- (3) **Failure to Attend.** Willful failure to attend any ADR Conference, and any other material violation of these Local Rules, shall be reported to the court by the mediator and may result in the imposition of sanctions by the court or other appropriate relief. Any such report of the mediator shall comply with the confidentiality requirements of the Local Rules. The court will take whatever action(s) it deems necessary and appropriate under the circumstances to resolve the issue of such willful failure to attend the ADR Conference and/or other violations of the Local Rules.

(e) ADR Conference Procedures. The mediator may establish appropriate procedures for the ADR Conference. The ADR Conference shall proceed informally. The Rules of Evidence shall not apply. There shall be no formal examination of witnesses.

(f) Confidentiality of ADR Proceedings.

(1) Protection of Information Disclosed at ADR. Unless otherwise agreed by the parties, the mediator and the participants in the ADR process are prohibited from divulging, outside of the ADR proceeding, any oral or written information disclosed by the parties or by witnesses in the course of the ADR Conference including the Submission of materials or any portion thereof. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the ADR proceeding, including but not limited to: (a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (b) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (c) proposals made or views expressed by the mediator; (d) statements or admissions made by a party in the course of the ADR Proceeding; and (e) documents prepared for the purpose of, in the course of, or pursuant to the ADR proceeding or Local Rules. In addition, without limiting the foregoing, and notwithstanding Local Rule 9072-8(e), Rule 408, Fed.R.Evid. and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other ADR procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a ADR Conference.

(2) Discovery from Mediator. The mediator shall not be compelled to disclose to the court or to any person outside the ADR Conference any of the records, reports, summaries, notes, communications, testimony, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the ADR proceeding in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceeding relating to the ADR proceeding. Nothing contained in this subsection shall prevent the mediator from reporting the status, but not the substance, of the ADR proceeding to the court in writing, from filing a final report as required by Local Rule 9072-8(g), or from complying with any of the other obligations set forth in Local Rule 9072-9.

(3) Protection of Proprietary Information. The parties, the mediator, and all ADR participants shall protect proprietary information obtained during the ADR Conference.

(4) Preservation of Privileges. The disclosure by a party of privileged information to the mediator or at the ADR Conference does not waive or otherwise adversely affect the privileged nature of the information.

(g) Recommendation by Mediator. The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written

settlement recommendation memorandum to the attorneys or pro se litigants, but not to the court.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

Rule 9072-9. Post ADR Procedures

(a) Preparation of Orders. If a settlement is reached at an ADR Conference, the party designated by the mediator shall submit a fully executed stipulation and proposed order to the court within 21 days after the conclusion of the ADR Conference. If the party designated by the mediator fails to prepare the stipulation and order proposed, the court may impose appropriate sanctions or other appropriate relief.

(b) Mediator's Certificate of Completion. Promptly after the conclusion of the ADR Conference, the mediator shall file with the court, and serve on the parties and the ADR Program Administrator, a certificate in the form provided by the court showing compliance or noncompliance with the Mediation Conference requirements of Local Rules 9072-1 through 9072-9 and whether or not a settlement has been reached. Regardless of the outcome of the ADR Conference, the mediator shall not provide the court with any details of the substance of the ADR Conference.

(c) Mediator's Report. In order to assist the ADR Program Administrator in compiling useful data to evaluate the ADR Program, and to aid the court in assessing the efforts of the members of the Panel, the mediator shall provide the ADR Program Administrator with an estimate of the number of hours spent in the ADR Conference and other statistical and evaluative information on a form provided by the court. The mediator shall provide this report whether or not the ADR Conference results in settlement.

(d) Withdrawal from ADR. Upon the filing of a mediator's certificate pursuant to Local Rule 9072-9(b) or the entry of an order withdrawing a matter from ADR pursuant to Local Rule 9072-9(d), the ADR will be deemed terminated, and the mediator excused and relieved from further responsibilities in the matter without further court order. If the ADR Conference does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing on all remaining issues pursuant to the court's scheduling orders.

(e) Termination of ADR. Upon the filing of the mediator's certificate pursuant to Local Rule 9072-9(b) or the entry of an order withdrawing a matter from ADR pursuant to Local Rule 9072-9(d), the ADR will be deemed terminated and the mediator excused and relieved from further responsibilities in the matter without further court order.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.