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UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF PENNSYLVANIA



LOCAL BANKRUPTCY RULES

Effective: January 1, 2005

(Modified: ~~September 1, 2014~~ **June 1, 2016**)

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PART I
COMMENCEMENT OF CASE; PROCEEDINGS
RELATING TO PETITION AND ORDER FOR RELIEF

Rule 1001-1 *Local Rules - General.*

- (a) *Scope.* The Local Bankruptcy Rules and Local Bankruptcy Forms are adopted to govern the practice and procedure before the United States Bankruptcy Court for the Middle District of Pennsylvania.
- (b) *Short Title.* These rules may be cited and referred to as the Local Bankruptcy Rules (or “L.B.R.”) and the forms as the [Local Bankruptcy Forms](#) (or “L.B.F.”).

Rule 1002-1 *Petition - General.*

- (a) *Unsigned Petition.* The clerk must accept for filing any petition in bankruptcy. If a petition is not signed by either the petitioner or counsel, a signed document must be filed within seven (7) days or the petition may be dismissed. The clerk will notify the party of the deficiency and the deadline by which the deficiency must be cured.
- (b) *Petition Submitted by Facsimile.* A petition may not be filed by facsimile unless prior approval has been obtained from the court. The court will not approve a filing by facsimile except in an emergency, as determined by the court.

Rule 1006-1 *Fees - Installment Payments and Waiver.*

- (a) *Petitions.* Each petition must be accompanied by the prescribed filing fee, including the miscellaneous fee, unless the petition is accompanied by an application to pay these fees in installments, or for a waiver in accordance with [F.R.B.P. 1006\(c\)](#). If a petition is filed without the required fee, without an application to pay in installments, or without a request for waiver, it is considered deficient and may be dismissed if the fee is not paid within seven (7) days. The court may dismiss a case without further notice if the approved installments are not paid when due.
- (b) *Other Filings.* The clerk must accept all pleadings for filing regardless of whether the fee required by the bankruptcy court fee schedule is paid. If the required fee is not paid at the time the pleading is filed, the clerk will notify the filing party that the party has seven (7) days to pay the fee or the pleading may be stricken by the court. Current information regarding fees and the number of copies required by the clerk may be found on the court’s website (www.pamb.uscourts.gov).

Rule 1007-1 *Lists, Schedules, Statements, Plans, and Other Documents.*

- (a) *Motion.* A motion for an extension of time to file lists, schedules, statements, plans, or other required documents must be filed with the court within fourteen (14) days of the entry of an order for relief or before any previously granted extension expires. If the motion is untimely, the court may deny the motion and dismiss the case. The motion must state why the extension is needed and be served on the unsecured creditors' committee and any examiner, if one has been appointed.
- (b) *Objection to Extension.* An objection to an extension of time must be filed within seven (7) days of service of the motion requesting the extension.
- (c) *Certification of No Payment Advices.* If a debtor does not receive payment advices, he must file a certification ([L.B.F. 1007-1\(c\)](#)) within the time specified in [F.R.B.P. 1007\(c\)](#). Nothing in this rule is intended to create an exception to the requirements of [11 U.S.C. § 521](#) or [F.R.B.P. 1007](#).

Rule 1007-2 *Mailing List or Matrix.*

- (a) *Mailing Matrix Required.* Unless filed electronically through the ECF system, the debtor must file with the petition a master list of creditors and other parties in interest ("mailing matrix") in the form prescribed by the clerk. Failure to file the matrix may constitute cause for dismissal of the case.
- (b) *Form of Paper Mailing Matrix.*
 - (1) The mailing matrix must be filed with the petition in paper form as prescribed by the clerk.
 - (2) Mailing matrices must be prepared so that each address is contained within five (5) lines, with each line not exceeding forty (40) characters (including spaces).
- (c) *Electronically Filed Cases.* Electronic filers must comply with the instructions found on the court's website (www.pamb.uscourts.gov) when entering the matrix docket event and uploading creditors into the ECF system in lieu of filing a paper matrix.
- (d) *Accuracy of Mailing Matrix.* The debtor is responsible for the accuracy and completeness of the mailing matrix. If debtor's counsel or a pro se debtor is notified by the Bankruptcy Noticing Center (BNC) that the creditors' meeting notice was not served on a party because of an incomplete address, counsel or the pro se debtor must notify the clerk in writing of the correct address and must refile the notice to the affected party.

Rule 1007-3 ~~*Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data*~~ *Summary of Your Assets and Liabilities and Certain Statistical Information*. A debtor must timely complete and file both the ~~Summary of Schedules and the Statistical Summary of Certain Liabilities and Related Data~~ *Summary of Your Assets and Liabilities and Certain Statistical Information*, as provided for in the current Official Bankruptcy Forms (*Official Form 106Sum*).

Rule 1009-1 *Amendments to Voluntary Petitions, Lists, Schedules, and Statements.*

- (a) *Notice.* An amendment to a voluntary petition, schedule, or statement must be served on any official committee and any affected entity or creditor. The debtor must file a certification that service has been made on these parties.
- (b) *Requirements.* An amendment must contain:
 - (1) the caption of the case;
 - (2) the case number; and
 - (3) a title including the word “AMENDED” or “AMENDMENT.”
- (c) *Form.* An amendment to a schedule or statement must be filed in a format similar to the original Official Form and include only the additions or deletions to the schedule or statement. The change must be prefaced by the statement: “ADD” or “DELETE.” An entire set of statements and schedules should not be refiled.
- (d) *Electronically Filed Amendments.* Debtor’s counsel must comply with the instructions found on the court’s website (www.pamb.uscourts.gov) regarding uploading any new creditors into the ECF system.

Rule 1015-1 *Joint Administration/Consolidation.*

- (a) *Joint Administration.*
 - (1) *Motion.* A request for joint administration must be made by motion. For each case subject to the motion, movant must serve the motion and notice of the answer date on:
 - (A) the debtor;
 - (B) all secured creditors;
 - (C) all parties in interest who have filed a request to receive copies and notices; and

- (D) any creditors' committee. If there is no creditors' committee, then the motion must be served as specified in [F.R.B.P. 1007\(d\)](#).
- (2) *Passive Notice.* Notice of the filing of a motion for joint administration must provide for a twenty-one (21) day objection period. If no objection is filed within twenty-one (21) days, the court may enter the order. A hearing will be set only upon filing of a timely objection to the motion.
- (b) *Substantive Consolidation.* A request for substantive consolidation must be filed using the self-scheduling procedures set forth in L.B.R. 9002-1. Unless service is made electronically through the ECF system, the movant must serve the motion and hearing required notice upon all parties in interest. The notice must provide for a twenty-one (21) day objection period.
- (c) *Severance or Deconsolidation.*
- (1) A request to deconsolidate cases that have been substantively consolidated must be filed using the self-scheduling procedures set forth in L.B.R. 9002-1. Unless service is made electronically through the ECF system, the movant must serve the motion and hearing required notice upon all parties in interest.
- (2) A request to sever jointly administered cases must be made by motion. Unless service is made electronically through the ECF system, the movant must serve the motion and passive notice on the debtor, all secured creditors, all parties who have specifically asked to receive copies and notices, and the creditors' committee. If there is no creditors' committee, then the motion must be served as specified in [F.R.B.P. 1007\(d\)](#). No hearing will be held on a motion to sever jointly administered cases unless an objection to the motion is filed within fourteen (14) days of service.

COMMENTS: *L.B.R. 1015-1 was amended effective October 15, 2010, to eliminate subparagraph (c)(3). The amendment reflects the present capability of CM/ECF to dismiss a debtor from a joint case without requiring case severance.*

Rule 1017-1 *Reinstatement of Dismissed Case.*

- (a) A motion to reinstate a dismissed case must be in writing. If the court sets a hearing on the motion, notice of the date by which objections must be filed and the hearing date must be served on the following:
- (1) the debtor; and
- (2) all parties previously notified of the dismissal under [F.R.B.P. 2002\(f\)\(2\)](#).

- (b) Any motion to reinstate a dismissed case may be granted summarily.

Rule 1019-1 *Final Reports in Cases Converted from Chapter 13 to Chapter 7.*

Pursuant to [F.R.B.P. 1019\(5\)\(B\)](#), the chapter 13 trustee must file a final report and account within sixty (60) days after conversion of the case.

Rule 1071-1 *District Boundaries and Divisional Offices.*

- (a) The Middle District of Pennsylvania is comprised of the following counties as set forth in [28 U.S.C. § 118\(b\)](#): Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.
- (b) For the purpose of accepting bankruptcy petitions, conducting hearings, and all other court business, the Middle District is organized under geographical divisions of Wilkes-Barre, Harrisburg, and Williamsport. Subject to court discretion, the counties listed in subsection (a) above are assigned to these divisions, with specific county assignment posted on the court's website under the "County Maps" link. (www.pamb.uscourts.gov).

Rule 1071-2 *Assignment of Cases.*

- (a) Upon filing, the clerk will assign bankruptcy cases to a bankruptcy judge within this District by random blind draw so that no party, their attorneys, or the public at large is able to make a deliberate choice of a particular judge.
- (b) The provisions of L.B.R. 1071-2(a) do not apply to cases filed under chapter 9. These cases are assigned to a bankruptcy judge by the Chief Judge of the Third Circuit Court of Appeals pursuant to [11 U.S.C. § 921\(b\)](#).

PART II
OFFICERS AND ADMINISTRATION; NOTICES;
MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS
AND ACCOUNTANTS

Rule 2002-1 *Notice to Creditors and Other Interested Parties.*

- (a) *Passive Notice.* A notice served under [F.R.B.P. 2002\(a\)\(3\), \(6\), \(7\), or \(8\)](#) must provide that if no objections are filed by the objection deadline, the court may grant the relief requested. No hearing date will be included in the notice unless a written request is filed.
- (b) *Notice to Parties in Interest.* In a case filed under any chapter, a proponent must give notice to all parties in interest as required under [F.R.B.P. 2002\(a\)\(2\), \(4\), \(5\), and \(6\)](#). In a chapter 11 case, a proponent also must give the notice required by [F.R.B.P. 2002\(b\)](#) and [\(d\)](#).
- (c) *Notices by a Chapter 7, 11, 12, or 13 Trustee.* Generally, the clerk will provide any notice required to be served on all parties in interest by a chapter 7, 11, 12, or 13 trustee. Notwithstanding the above, a chapter 7 trustee pursuing assets is required to provide notice to all creditors and parties in interest, under these rules or under the Federal Rules of Bankruptcy Procedure, of the following:
- (1) a trustee's application for compensation;
 - (2) an attorney for trustee's application for compensation;
 - (3) any notice of sale; ~~and~~
 - (4) any notice of compromise or settlement pursuant to [F.R.B.P. 9019](#); and
 - (~~4~~5) notice of a trustee's final report, if the net proceeds realized exceed \$1,500.00.
- (d) *Notice of § 341(a) Meeting.*
- (1) *General Rule.* The clerk must serve notice of a meeting under [11 U.S.C. § 341\(a\)](#) on all parties in interest listed on the mailing matrix.
 - (2) *Amended Mailing Matrix.* The debtor must serve notice of a meeting under [11 U.S.C. § 341\(a\)](#) on all parties in interest added to the mailing matrix after notice of the meeting has been served pursuant to L.B.R. 2002-1(d)(1).
 - (3) *Notice of Rescheduled Meeting.* If the meeting under [11 U.S.C. § 341\(a\)](#) is rescheduled before the meeting is called to order, notice of the rescheduled

meeting must be given to all parties in interest by the party requesting the rescheduled meeting. When rescheduling is caused by inclement weather, Acts of God, sudden illness, or the debtor's failure to file required documents, the clerk will provide notice of the rescheduled meeting. However, in each case for a pro se debtor, the clerk must provide notice of the rescheduled meeting to all parties in interest.

- (4) *Chapter 13 cases.* In a chapter 13 case, notice of the meeting under [11 U.S.C. § 341\(a\)](#) must include instructions on filing a proof of claim under L.B.R. 3001-1.
- (e) *Notice to Equity Security Holders.* The debtor must provide notice of the order for relief and any other notices required under [F.R.B.P. 2002\(d\)](#) to its equity security holders.
- (f) *Certificate of Service.* The certificate of service showing compliance with this rule must be filed with the clerk no later than seven (7) days following the date of service.

Rule 2003-1 *Meeting of Creditors and Equity Security Holders.*

- (a) *Date and Place.* Any request to deviate from the general requirement that a debtor personally appear at a meeting under [11 U.S.C. § 341\(a\)](#) must be made first to the United States trustee, or his designee. If the United States trustee denies the request, the debtor may file a motion with the court.
- (b) *Attendance.* Debtor's attorney should accompany debtor to a meeting under [11 U.S.C. § 341\(a\)](#). If a debtor's attorney is unable to attend, he or she must arrange for a partner, member, or regular associate of his or her firm to serve as counsel or for another attorney to attend, if permitted under the Pennsylvania Rules of Professional Conduct.
- (c) *Adjournment/Continuance.* If the meeting under [11 U.S.C. § 341\(a\)](#) has been called to order by the trustee, the trustee must orally announce the new date and time to the parties in attendance at the originally scheduled meeting. The requirement, pursuant to [F.R.B.P. 2003\(e\)](#), that the presiding official, the trustee, file a statement specifying the date and time to which a meeting of creditors is adjourned may be satisfied by using the continued feature within the trustee interface of the ECF system.

Rule 2004-1 *Depositions and Examinations.* The court will consider a motion under [F.R.B.P. 2004\(a\)](#) fourteen (14) days after service on the respondent. If no objection or answer is filed within fourteen (14) days, an order may be entered by the court. The order may be entered immediately if the motion contains a certification that the respondent has agreed to submit to the examination.

Rule 2014-1 *Employment of Professionals.*

- (a) *Application to Employ Counsel or Other Professionals.* An application to employ counsel or other professionals must be filed with the clerk along with a verified statement of disinterestedness and a proposed order.
- (b) *Application to Employ Persons for the Sale or Lease of Estate Property.* An application for employment of an agent or broker for the sale or lease of estate property must be accompanied by a copy of the signed written contract employing the agent or broker. An application for employment of an auctioneer must be accompanied by a copy of the auctioneer's surety bond. A contract for employment must provide that it is effective only upon court approval. When an applicant seeks appointment as a real estate agent or broker, as an appraiser, or as an auctioneer, the applicant must state if he or she is seeking compensation at a flat rate or on a percentage basis. Under L.B.R. 6005-1(b), an applicant for compensation at a flat rate or on a percentage basis may request the court to approve the terms of compensation without filing a separate fee application, but if applicant later requests compensation on different terms, the court must approve compensation. An application for employment under this rule requires conformity with the notice requirements of [F.R.B.P. 2002\(a\)\(6\)](#).
- (c) *Objection by the United States Trustee.* Any objection to an application to employ must be filed by the United States trustee within seven (7) days from the date of service of the application unless the application is filed within fourteen (14) days of the filing of the petition. If the application is filed within fourteen (14) days of the filing of the petition, any objection must be filed within twenty-one (21) days of the filing of the petition.

Rule 2016-1 *Compensation of Professionals.*

This rule governs the procedure for professional applications for compensation. All professional fees paid from property of the estate are subject to court approval. Compensation of attorneys for chapter 13 debtors are also subject to the provisions of L.B.R. 2016-2.

- (a) *Fee Applications.* A fee application must include:
 - (1) *Cover Sheet.* A fee application must include a cover sheet that provides the court with a summary of the fee application. The cover sheet must conform substantially to [L.B.F. 2016-1](#).
 - (2) the date of the order appointing the professional;
 - (3) a statement indicating whether the application is for final or interim compensation and expenses, the total amounts requested, and the time period for the services rendered;

- (4) the date and amount of previous compensation, if any, including any retainers paid;
- (5) a chronological listing of services performed. Whenever applicable, the listing should include:
 - (A) an identification of the subject matter of any correspondence or phone call together with the party with whom that communication occurred;
 - (B) an identification of the subject matter of and parties involved in any hearing or trial, if the service involved is attendance at a hearing or trial;
 - (C) an identification of any pleading drafted; and
 - (D) the date the service or expense was incurred and the time expended, in tenths of hours, for the service rendered;
- (6) an itemization of the expenses for which reimbursement is requested;
- (7) an allegation that the professional is a disinterested person and has not represented or held an interest adverse to the interest of the estate on the matter on which he or she was employed in compliance with [11 U.S.C. § 327\(a\)](#);
- (8) for applications filed on behalf of attorneys, a history of the case in narrative form. The history should include, if applicable:
 - (A) a description of the debtor's financial situation when the case was filed;
 - (B) a description of significant events that have occurred post-petition;
 - (C) a description of specific issues that the debtor is required to resolve before a plan can be confirmed or the case otherwise resolved (for example, liquidation of real estate or resolution of pre-petition litigation);
 - (D) the status of any specific issues and their resolution; and
 - (E) items that need to be completed before the case can be confirmed or otherwise brought to a conclusion;
- (9) a certification that the entity on whose behalf the applicant is employed has been given the opportunity to review the application and whether that entity has approved the requested amount;

- (10) the names and hourly rates of all applicant's professionals and paraprofessionals who billed time. This should be accompanied by an explanation of any changes in hourly rates from those previously billed; and
 - (11) a proposed order of the court approving the application.
- (b) *Categorical Listing of Services.*
- (1) In a case under any chapter in which the total aggregate amount requested for compensation by a professional is in excess of \$100,000.00 the applicant must include a categorical listing of services. Appendix 2016-1 provides a non-exclusive list of suggested project categories.
 - (2) The description of each category must include the following information:
 - (A) a heading generally describing the services within the category;
 - (B) a narrative summary that:
 - (i) describes the project and its status, including all pending litigation for which compensation and reimbursement are requested; and
 - (ii) states the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.
- (c) *Non-Attorney Professionals Compensated on Non-Hourly Basis.* If the court has previously entered an order approving the employment of a non-attorney who is customarily paid on a non-hourly basis and whose terms of compensation the court has approved as provided in L.B.R. 2014-1(b), then no application for compensation is required for such non-attorney.

Rule 2016-2 *Compensation of Debtors' Attorneys in Chapter 13 Cases.*

The provisions of this rule will apply to all chapter 13 cases filed on or after October 1, 2014.

- (a) *Rights and Responsibilities Agreement.* Unless otherwise ordered by the court, in all chapter 13 cases in which a debtor is represented by an attorney, the debtor and the attorney must execute the Rights and Responsibilities Agreement as set forth in [L.B.F. 2016-2\(a\)](#). Counsel must retain the original Agreement in the case file and provide a fully executed copy to the debtor.

- (b) *General Rule.* Except as provided in L.B.R. 2016-2(c), an attorney representing a debtor in a chapter 13 case must file an application for approval of compensation in order to be paid for all services rendered after the filing of the case. The fee application must comply with L.B.R. 2016-1, except the information required under (a)(1) and (a)(8) of that rule may be omitted. A model fee application form for use by attorneys representing a chapter 13 debtor is set forth in [L.B.F. 2016-2\(b\)](#) (“lodestar fee”). The attorney must also file a certification that a Rights and Responsibilities Agreement ([L.B.F. 2016-2\(a\)](#)) has been executed by the attorney and by the debtor. Filing of the certification may be accomplished by a virtual entry in the ECF system. After the petition is filed, an attorney may not receive payment of fees except through the chapter 13 plan, unless payment is otherwise approved by the court.
- (c) *Presumptively Reasonable Fee.* When the Rights and Responsibilities Agreement provides for the payment of the presumptively reasonable fee, the attorney may receive compensation in the maximum amount of \$4000.00. Further, no fee application is required to be filed where the presumptively reasonable fee is agreed to. In such case, the attorney is only required to file [L.B.F. 2016-2\(c\)](#) - Request for Payment of Chapter 13 Compensation and Expenses, with parts A and C completed. If the chapter 13 trustee requires the debtor to file a business report, or if the debtor holds a controlling interest in a corporation or LLC operating a business, an attorney may receive additional compensation in the maximum amount of \$1000.00 without seeking approval from the court. An attorney representing a consumer debtor who proposes to make mortgage payments through a chapter 13 plan (“conduit plan”) may receive additional compensation of \$500.00, without seeking approval from the court. When an attorney agrees to accept a presumptively reasonable fee, all covered legal services rendered by the attorney through confirmation of the plan must be included in the fee, except as provided in paragraph (e). Approval of the allowance of a presumptively reasonable fee will be considered by the court at confirmation and any approval will be given by virtue of the entry of the confirmation order. Consideration of the allowance of a fee for the preparation, filing, and defense of a modified plan will be given by virtue of the entry of the order granting or denying the motion to modify.
- (d) *Indication of Type of Fee in Plan.* The attorney for the debtor must indicate in section 3B of the model plan ([L.B.F. 3015-1](#)) whether the attorney seeks the presumptively reasonable fee or the lodestar fee.
- (e) *Additional Fees.* An attorney who has agreed to accept a presumptively reasonable fee may request additional fees under L.B.R. 2016-2(b) for services rendered after confirmation of the plan or in connection with adversary proceedings. In the event that an attorney determines that services required to be rendered before confirmation of plan exceed normal and customary services in a chapter 13 case, the attorney may seek approval of additional fees under L.B.R. 2016-2(b).

- (f) *Post-Confirmation Modification Plans.* An attorney who has agreed to payment of the presumptively reasonable fee may receive additional compensation of \$500.00 for each post-confirmation plan modification which is filed, without seeking approval from the court.
- (g) *Payment of Fees Through Plan.* An attorney who has agreed to be paid through a proposed plan must file a Request for Payment of Chapter 13 Compensation and Expenses ([L.B.F. 2016-2\(c\)](#)) (“Request for Payment”) no later than seven (7) days before the confirmation hearing on the plan. Failure to timely file a Request for Payment may result in a delay of confirmation of the chapter 13 plan. In the event the confirmation hearing is continued, the Request for Payment is not required to be refiled, if no additional fees are requested. When additional fees are requested, a new Request for Payment must be filed no later than seven (7) days before the continued confirmation hearing.

COMMENTS: *Effective September 1, 2015, former L.B.R. 2016-2(h) was repealed because it conflicted with the Supreme Court decision Harris v. Viegelahn, 135 S.Ct. 1829 (2015).*

L.B.R. 2016-2 is being adopted as of September 1, 2014, to provide for specific procedures for the approval of attorneys’ fees in chapter 13 cases. The new rule will apply to chapter 13 cases which are filed on or after October 1, 2014. The general rule will be applicable to attorneys who have agreed to provide services using the lodestar approach. A fee application form is adopted as [L.B.F. 2016-2\(b\)](#). To provide a more efficient means of approving fees in chapter 13 cases, a presumptively reasonable fee is being adopted; this will enable attorneys to obtain approval for fees in certain amounts without filing a fee application. The rule also adopts a Rights and Responsibilities Agreement form to be completed by all represented debtors and their attorneys. The Agreement specifies the services an attorney will perform, if required under the circumstances of a particular case, as well as the responsibilities of the debtor to assist in the prosecution of the case. The Agreement also will specify the compensation arrangements agreed to by the debtor and the attorney. The rule also provides for a Request for Payment of Chapter 13 Compensation and Expenses to be filed prior to confirmation to allow the chapter 13 trustee to determine the amount of fees that will be paid through the plan. The rule also provides that when a case is converted or dismissed and the chapter 13 trustee is required to return payments made to the debtor, counsel may request the payment of outstanding attorneys’ fees.

Rule 2090-1 *Attorneys - Admission to Practice.*

- (a) *General Admission.* Except as provided below, no attorney may appear on behalf of another unless first admitted to practice in the United States District Court for the Middle District of Pennsylvania.
- (b) *Admission Pro Hac Vice.* An attorney who is admitted to practice before any United States district court and the highest court of any state or the District of Columbia, and

who is a member of the bar in good standing in every jurisdiction where admitted to practice, and who is not subject to pending disciplinary proceedings in any jurisdiction, may be admitted to practice before this court, but only for the purpose of a particular case and not generally under subdivision (a). A request for admission under this subdivision must be made by written motion of a member of the bar of this court or by the attorney intending to practice before this court. The court, in its discretion, may grant an oral motion for admission made in open court.

Rule 2090-2 *Attorneys - Discipline and Disbarment.*

- (a) *Suspension or Disbarment from Practice.* This court has the power and authority to govern, control, and discipline the conduct of attorneys appearing before it, including the power to suspend or disbar attorneys from practice before it.
- (b) *Failure to Appear.* An attorney who fails to appear without just cause, either on a matter before the court or as counsel for a debtor who fails to attend the debtor's § 341(a) meeting, may be subject to discipline by the court.
- (c) *Failure to Prepare.* An attorney who, without just cause, fails to adequately prepare for any pretrial conference, hearing, or trial may be subject to discipline by the court.

PART III
CLAIMS AND DISTRIBUTION TO CREDITORS AND
EQUITY INTEREST HOLDER; PLANS

Rule 3001-1 *Claims and Equity Security Interests - General.*

- (a) *Proof of Claim - Contents.* Any proof of claim filed must be substantially in compliance with the Proof of Claim (Official Form 410) and [F.R.B.P. 3001](#).
- (b) *Proof of Claim - Service.* In a chapter 7 asset case, a chapter 12 case, or a chapter 13 case, a claimant must serve a copy of its proof of claim, with all attachments, on a pro se debtor.

COMMENTS: *L.B.R. 3001-1 was amended effective December 1, 2011, to avoid repetition of the provisions of [F.R.B.P. 3001](#) and to incorporate the requirements of [F.R.B.P. 3001\(c\)](#) for proofs of claim filed in individual debtor cases.*

Rule 3002-1 *Filing Proofs of Claim in Closed Cases.* Unless filed electronically, any proof of claim received by the clerk in a closed case will be returned to the claimant and marked: “Not Filed, Case Closed.”

Rule 3002.1-1 *Response to Notice of Final Cure Payments.* In chapter 13 cases, a holder’s response to a notice of final cure payment made pursuant to [F.R.B.P. 3002.1\(g\)](#) must be made by filing and serving **the Response to Notice of Final Cure Payment (Director’s Form 4100R)** ~~L.B.F. 3002.1-1~~. Filing and service must be made in accordance with the provisions of [F.R.B.P. 3002.1\(g\)](#).

COMMENTS: *L.B.R. 3002.1-1 was amended effective June 1, 2016, to provide for the use of Director’s Form 4100R - Response to Notice of Final Cure Payment and to eliminate L.B.F. 3002.1-1.*

Rule 3003-1 *Filing Proofs of Claim in Chapter 11 Cases.* In chapter 11 cases, notice of a deadline for proofs of claim must be given in the following manner:

- (a) *Party Request.* A party requesting the court to set a date within which claims must be filed must provide notice of the bar date and a form of proof of claim to all creditors.
- (b) *Sua Sponte.* If the court *sua sponte* sets a date within which claims must be filed, the clerk must provide notice of the bar date and a form of proof of claim to all creditors.

Rule 3004-1 *Filing of Proofs of Claim by Debtor or Trustee.* A debtor or trustee filing a proof of claim in the name of a creditor under [F.R.B.P. 3004](#) must file an original and serve a copy on the creditor.

Rule 3005-1 *Filing of Proofs of Claim by Co-Debtor.* A co-debtor filing a proof of claim in the name of a creditor under [F.R.B.P. 3005](#) must file an original and serve a copy on the creditor, any co-debtors, and the debtor.

Rule 3006-1 *Claims - Withdrawal.* A request to withdraw a claim must state:

- (a) whether an objection to the claim was filed;
- (b) whether a complaint was filed against the claimant; and
- (c) whether the claimant has accepted or rejected a plan or otherwise participated significantly in the case.

Rule 3007-1 *Claims - Objection.*

- (a) *Contents.* An objection to a claim must list in the caption or the pleading the claim number recorded on the claims register and state particular grounds for the objection, including, but not limited to:
 - (1) whether the claim should be disallowed in its entirety;
 - (2) whether the claim should be allowed in an amount different from that requested; or
 - (3) whether the classification of the claim (secured, priority unsecured, general unsecured) is incorrect.
- (b) *Separate Objection.* A separate objection must be filed for each claim objected to, except for omnibus objections filed pursuant to [F.R.B.P. 3007\(d\)](#).
- (c) *Filing and Hearing Notice for ECF Filers.* An objection to claim must be filed using the self-scheduling procedures set forth in L.B.R. 9002-1. Unless service is made electronically through the ECF system, the objector must serve the objection and notice ([L.B.F. 3007-1](#) - Notice of Objection to Claim and Hearing Date) upon the persons specified under [F.R.B.P. 3007\(a\)](#). The ECF filer must also file a certificate of service which complies with L.B.R. 9013-2.
- (d) *Filing and Hearing Notice for Non-ECF Filers.* A non-ECF filer must file an objection to claim with the clerk's office. When the objection to claim is filed, the non-ECF filer must, within five (5) days, mail a copy of the objection to claim to the claimant and the trustee. The non-ECF filer must also file a certificate of service which complies with L.B.R. 9013-2. After the certificate of service is filed, the clerk will then issue and send a notice, at least thirty (30) days prior to the hearing, setting a claim objection hearing date.

- (e) *No Response Required: Hearing.* No response is required to an objection to a claim. There will be a hearing on an objection to a claim.

COMMENTS: *L.B.R. 3007-1 was amended effective July 1, 2015, it having been determined that provisions of the prior rule authorizing entry of a default judgment against a claimant on a claim objection if the claimant did not: (1) file an answer; (2) file an amended claim; or, (3) request a hearing, conflicts with provisions of 11 U.S.C. § 502(b) and F.R.B.P. 3007.*

Rule 3010-1 *Small Dividends in Chapter 13 Cases.* The chapter 13 trustee may make payments of amounts less than \$15.00 to a creditor.

Rule 3015-1 *Chapter 13 - Model Plan.*

- (a) *Use of Plan Form.* In chapter 13 cases, the plan must be filed in substantial conformity with [L.B.F. 3015-1](#).

COMMENTS: *L.B.R. 3015-1 was amended effective March 1, 2013, principally to eliminate repetition of, or any conflict with, the provisions of [F.R.B.P. 3002.1](#) and to avoid any repetition of, or any conflict with, the requirements of RESPA concerning qualified written requests concerning residential mortgages.*

- (b) *Service.* If a chapter 13 plan includes either a motion to value collateral or a motion to avoid a lien, service of the plan must be made on affected parties under [F.R.B.P. 9014\(b\)](#).

Rule 3015-2 *Chapter 12 or Chapter 13 - Amendments to Plans.*

- (a) *Numbering.* Amended plans must be numbered sequentially beginning with "First Amended Plan."
- (b) *Amendments to the Chapter 12 or Chapter 13 Plan Prior to Confirmation.* Once a plan has been filed, any changes to the plan proposed by the debtor must be made by filing an amended plan and not by filing a stipulation between the affected parties.
- (c) *Filing and Service of Chapter 12 or Chapter 13 Amended Plan - Pre Confirmation by a CM/ECF Filer.* If an amended plan is filed after the clerk's office notices the initial confirmation hearing but prior to the confirmation of the plan, a CM/ECF filer may request a new confirmation hearing date by using the self-scheduling procedures as set forth in L.B.R. 9002-1. At the time the amended plan is filed, the CM/ECF filer must provide a copy of the amended plan and the notice setting confirmation objection and hearing dates for the pre confirmation amended plan to each party on the mailing matrix, either by U.S. mail or electronically through the CM/ECF system.

- (d) *Filing and Service of Chapter 12 or Chapter 13 Amended Plan - Pre Confirmation by a Pro Se Debtor.* A chapter 12 or chapter 13 debtor who represents him or herself must file the amended plan with the clerk's office. When the amended plan is filed, the pro se debtor must, within five (5) days, mail a copy of the amended plan to each party on the mailing matrix. The pro se debtor must also file a certificate of service, which complies with L.B.R. 9013-2. After the certificate of service is filed, the clerk will then issue and send to creditors and parties in interest a notice setting confirmation objection and hearing dates for the pre confirmation amended plan.
- (e) *Modification of the Chapter 12 or Chapter 13 Plan After Confirmation by a CM/ECF Filer.* After a plan has been confirmed, a motion may be filed to modify the confirmed plan. The proposed modified plan and a proposed order must be attached to the motion to modify.
- (f) *Service of Chapter 13 Amended Plan After Confirmation by a CM/ECF Filer.* An amended post confirmation plan and a passive notice containing the objection date must be provided to each creditor and party in interest, either by U.S. mail or electronically through the CM/ECF system. If an amended plan is filed that alters the treatment of the claims of a limited number of creditors, the debtor may be excused from serving the motion, notice, and amended plan on all creditors by filing [L.B.F. 3015-2\(a\)](#), certifying that service has been made on the affected creditors. Further, if an amended plan is filed to alter funding of the plan or to make technical amendments, but does not affect the payment of any creditor's claim, the debtor may be excused from serving the motion, notice, and amended plan on all creditors by filing [L.B.F. 3015-2\(b\)](#), certifying the limited changes to the confirmed plan.
- (g) *Service of Chapter 12 Amended Plan After Confirmation by a CM/ECF Filer.* An amended post confirmation plan and a passive notice containing the objection date must be provided to each creditor and party in interest, either by U.S. mail or electronically through the CM/ECF system. If an amended plan is filed that alters the treatment of the claims of a limited number of creditors, the debtor may be excused from serving the motion, notice, and amended plan on all creditors by filing [L.B.F. 3015-2\(c\)](#), certifying that service has been made on the affected creditors. Further, if an amended plan is filed to alter funding of the plan or to make technical amendments, but does not affect the payment of any creditor's claim, the debtor may be excused from serving the motion, notice, and amended plan on all creditors by filing [L.B.F. 3015-2\(d\)](#), certifying the limited changes to the confirmed plan.
- (h) *Filing and Service of Chapter 13 Amended Plan After Confirmation by Pro Se Debtor.* A pro se debtor who wishes to amend a confirmed plan must file a motion to modify the confirmed plan with the clerk's office. The proposed modified plan and a proposed order must be attached to the motion to modify. The pro se debtor must, within five (5) days, mail a copy of the amended plan, the motion to modify, and a proposed order to each creditor and party in interest. The pro se debtor must also file a certificate of

service, which complies with L.B.R. 9013-2. After the certificate of service is filed, the clerk will then issue and send to creditors and parties in interest a passive notice setting the objection date on the post confirmation amended plan.

- (i) *Filing and Service of Chapter 12 Amended Plan After Confirmation by Pro Se Debtor.* A pro se debtor who wishes to amend a confirmed plan must file a motion to modify the confirmed plan with the clerk's office. The proposed modified plan and a proposed order must be attached to the motion to modify. The pro se debtor must, within five (5) days, mail a copy of the amended plan, the motion to modify, and a proposed order to each creditor and party in interest. The pro se debtor must also file a certificate of service, which complies with L.B.R. 9013-2. After the certificate of service is filed, the clerk will then issue and send to creditors and parties in interest a passive notice setting the objection date on the post confirmation amended plan.
- (j) *Waiver of Objections to Chapter 12 or Chapter 13 Plans.* The failure to file a timely objection, upon notice, is deemed a waiver of all objections to the amended plan and any prior plans, and the court may confirm the amended plan without further notice or hearing.
- (k) *Time for Filing Chapter 12 or Chapter 13 Amended Plans.* Within thirty (30) days after an order is entered that determines whether a lien may be avoided, determines the priority or extent of a lien, or resolves an objection to a claim, the debtor must file an amended plan to provide for the allowed amount and priority of the claim, if the allowed amount or priority differs from the claim as stated in the plan.

Rule 3015-3 *Chapter 12 or Chapter 13 - Confirmation Hearing.*

- (a) *Chapter 13 Pre-Confirmation Certifications.* Debtor must **file with the clerk** ~~submit to the chapter 13 trustee~~ a Pre-Confirmation Certification in conformity with [L.B.F. 3015-3\(a\)](#) and **submit to the Chapter 13 Trustee** a Certification Regarding Domestic Support Obligation(s) in conformity with [L.B.F. 3015-3\(b\)](#), if applicable, at least twenty-four (24) hours prior to the time of the hearing.
- (b) *Chapter 12 Pre-Confirmation Certification.* Debtor must **file with the clerk** ~~submit to the chapter 12 trustee~~ a Pre-Confirmation Certification in conformity with [L.B.F. 3015-3\(c\)](#) certifying compliance with [11 U.S.C. § 1225\(a\)\(7\)](#) **at least twenty-four (24) hours prior to the time of the hearing.**
- (c) *Appearances at Hearing.* Neither the debtor nor debtor's counsel need appear at the confirmation hearing if:
 - (1) No objections to the chapter 13 plan have been timely filed or any timely filed objections have been withdrawn; and

- (2) The Pre-Confirmation Certifications have been filed in conformity with L.B.R. 3015-3(a).

If neither the debtor nor debtor's counsel appear at the hearing under this subsection and a party in interest appears and is permitted to lodge an untimely objection, the court will reschedule the hearing on confirmation. Otherwise, debtor and debtor's counsel must attend all scheduled confirmation hearings.

- (d) *Payment of Filing Fee.* The entire case filing fee must be paid prior to the confirmation of any chapter 13 plan. Provided, the requirements of this subparagraph may be waived by the court, upon motion for cause.

Rule 3015-4 *Chapter 13 - Adequate Protection Payments.* For cases filed on or after October 17, 2005, the debtor must make pre-confirmation adequate protection payments as follows:

- (a) *Adequate Protection Payments to Lessors.* Adequate protection payments to a lessor of personal property must be made by the debtor directly to the lessor if the debtor's plan so provides. If the debtor's plan provides for the lease payments to be made by the trustee, the debtor's plan payments must be made timely so that the trustee may begin prompt distribution.
- (b) *Adequate Protection Payments to Secured Creditors.* Pre-confirmation adequate protection payments to a secured creditor must be made by the debtor directly to the secured creditor if the debtor's plan so provides. If the plan does not so provide, the adequate protection payments must be paid to the trustee and not directly to the secured creditor. The adequate protection payments must be made timely so that the trustee may begin prompt distribution.
- (c) *Creditor Identification.* The debtor's plan must separately identify by creditor name, address, account number, and monthly payment amount each creditor entitled to receive adequate protection payments.
- (d) *Adequate Protection Payment Distribution.* The trustee will distribute pre-confirmation adequate protection payments to any creditor identified in the plan as receiving payments from trustee and for which a proof of claim has been filed, less the trustee's statutory compensation and expenses, as soon as practicable after receipt of said payment from the debtor.

Rule 3015-5 *Entry of Chapter 13 Discharge for Cases Filed on or After October 17, 2005.* For all chapter 13 cases filed on or after October 17, 2005, a **Chapter 13** discharge will not be entered unless the debtor has filed, after the completion of plan payments, **Debtor's Certifications Regarding Domestic Support Obligations and 11 U.S.C. § 522(q) (L.B.R. 3015-5)** the **Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q) (Official Form 2830)** and has completed an

instructional course concerning personal financial management described in [11 U.S.C. §§ 111](#) and [1328\(g\)\(1\)](#), and either the debtor or the course provider has filed a copy of Official Form 23 (*Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management Certification About a Financial Management Course (Official Form 423)*).

COMMENTS: *L.B.R. 3015-5 was amended effective June 1, 2016, to provide for the use of Official Form 423 - Certification About a Financial Management Court and to eliminate L.B.F. 3015-5.*

Rule 3015-6 *Chapter 12 - Individual Debtor Discharge.* For all individual chapter 12 cases, a discharge will not be entered unless the debtor has filed, within seven (7) days after completion of plan payments, an Individual Chapter 12 Debtor's Certification Regarding Domestic Support Obligations ([L.B.F. 3015-6](#)), in conformity with the requirements of [11 U.S.C. § 1228\(a\)](#) and (f).

Rule 3016-1 *Disclosure Statement - General.*

- (a) *Contents.* Unless the court orders otherwise, any disclosure statement or amended disclosure statement must include the following information in addition to all other information required by applicable law:
- (1) an introductory narrative summarizing the plan, which must include:
 - (A) an identification of each class of claims or interests;
 - (B) the composition of each class as to number and type of creditor or interest;
 - (C) the amount of claims and interests (specifying any that are known to be disputed and how they will be treated under the plan);
 - (D) the amount (dollar and/or percentages) to be paid to each class and the timing of payments to be made under the plan; and
 - (E) all sources and amounts of funding in reasonable detail;
 - (2) a summary exhibit setting forth a liquidation analysis as if assets of the debtor were to be liquidated under chapter 7; and
 - (3) a narrative summarizing the scheduled assets and liabilities as of the date of the order for relief:
 - (A) reciting the disposition of assets during the chapter 11 case;

- (B) describing the process for handling initial and subsequent disbursements under the plan; and
 - (C) identifying persons responsible for making disbursements under the plan.
- (b) *Disclosure Statement Accompanying Reorganization Plan.* Unless a liquidating plan is proposed, each disclosure statement must also include a projected cash flow and budget, including plan payments over the shorter of the life of the plan or three fiscal years following confirmation, showing all anticipated income and expenses.

Rule 3017-1 *Disclosure Statement - Approval.*

- (a) *Notice and Hearing.* Upon receipt of a disclosure statement, the court will issue an order and notice for hearing on the disclosure statement. The plan proponent filing the disclosure statement must mail the order and notice to all parties listed in [F.R.B.P. 3017\(a\)](#).
- (b) *Amended Disclosure Statements.* With every amended disclosure statement, the plan proponent must file a certification in substantial compliance with [L.B.F. 3017-1](#). The plan proponent must serve copies of the amended disclosure statement on parties in interest whose claims or interests may be affected by the changes and notify them of a new objection date as directed by the court.
- (c) *Transmission of Approved Disclosure Statement and Order.* After entry of an order approving the disclosure statement, the plan proponent must mail the order, the plan or a court-approved summary of the plan, the disclosure statement, and a ballot for accepting or rejecting the plan conforming to Class [] Ballot for Accepting or Rejecting Plan of Reorganization (Official Form 314) to all creditors and interest holders. The ballot must state that ballots are to be returned to the plan proponent and not to the clerk.

Rule 3018-1 *Ballots - Voting on Plans.*

- (a) *Service of Ballots and Report of Results of Balloting.* Any ballot accepting or rejecting a plan must be served on the plan proponent as specified on the ballot. No less than seven (7) days before the confirmation hearing, the plan proponent must file a report of the balloting with the clerk and serve a copy on the debtor (unless the debtor is the plan proponent) and each committee. The proponent must retain the ballots.
- (b) *Form of Report of Balloting.* The report of balloting must substantially conform to [L.B.F. 3018-1](#).

Rule 3019-1 *Chapter 11 - Amendments to Plan.* With every plan that is amended or modified before confirmation, a plan proponent must file a certification in substantial compliance with [L.B.F. 3019-1](#). The plan proponent must serve copies of the amended plan on parties in interest whose claims or interests may be affected by the changes and notify them of a new objection date as directed by the court.

Rule 3020-1 *Chapter 11 - Individual Debtor Confirmation.* For all individual chapter 11 cases, a confirmation order will not be entered unless the debtor has filed, at least seven (7) days before the confirmation hearing, an Individual Chapter 11 Debtor's Certification Regarding Domestic Support Obligations ([L.B.F. 3020-1](#)) in conformity with the requirements of [11 U.S.C. § 1129\(a\)\(14\)](#).

COMMENTS: L.B.R. 3020-1 was amended effective September 1, 2014, to clarify that the requirement of the Individual Chapter 11 Debtor's Certification Regarding Domestic Support Obligations is a condition for confirmation, not discharge.

Rule 3022-1 *Final Report/Decree (Chapter 11).*

- (a) *Motion.* A motion for a final decree must certify that the estate is fully administered and list all pending adversary proceedings related to the case.
- (b) *Service of Motion.* The motion must be served on all secured creditors and any committee appointed under [11 U.S.C. § 1102](#), or its authorized agent. If no committee of unsecured creditors has been appointed under § 1102, the motion must be served on the creditors included on the list filed under [F.R.B.P. 1007\(d\)](#).

PART IV
THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1 *Automatic Stay - Relief from.*

- (a) *Filing a Motion for Relief from the Automatic Stay.* A motion for relief from the automatic stay must be filed using the self-scheduling procedures set forth in L.B.R. 9002-1. Unless service is made electronically through the ECF system, the movant must serve the motion and semi-passive notice upon the persons specified under [F.R.B.P. 4001](#) and L.B.R. 4001-6.
- (b) *Combination of Motions.* A motion for relief from the stay may not be combined with a request for any other relief.
- (c) *Proposed Order.* Each motion for relief from the automatic stay must be accompanied by a proposed order granting the relief requested in the motion.
- (d) *Contents of Motion.* The motion seeking relief must state the following:
 - (1) the location of the property;
 - (2) the priority of the movant's lien relative to any other liens against the property, if known without further inquiry;
 - (3) the contract amount of current monthly installments; and
 - (4) the stage to which debt enforcement or foreclosure actions had progressed when the order for relief was entered.
- (e) *Debtor's Principal Residence.* If relief is sought for a post-petition default in a chapter 11 or 13 case with respect to property that is a debtor's principal residence, the movant must file [L.B.F. 4001-1](#), signed by the movant, or an officer or employee of the movant, with the motion.
- (f) *Concurrence in Motion.* The movant must seek the concurrence of the debtor and of the trustee, if one has been appointed in the case. The movant must file a certificate with the motion for relief stating whether concurrence was obtained. If a certificate of concurrence/nonconcurrence is not filed with the motion for relief, the court may deny the motion *sua sponte*.

Rule 4001-2 *Cash Collateral.*

- (a) *Filing a Motion to Authorize or Prohibit Use of Cash Collateral.* A motion seeking to authorize or prohibit the use of cash collateral must be filed using the self-scheduling procedures set forth in L.B.R. 9002-1. Unless service is made electronically through the ECF system, the movant must serve the motion and hearing required notice upon the persons specified under [F.R.B.P. 4001](#) and L.B.R. 4001-6.
- (b) *Required Disclosure of Certain Provisions of Financing Motion.* Each motion to use cash collateral must comply with L.B.R. 4001-3(c), (d), and (e), and interim and final relief must be granted, denied, or conditioned as provided under L.B.R. 4001-3(f) and (g).

Rule 4001-3 *Obtaining Credit.*

- (a) *Filing a Motion to Obtain Credit.* A motion seeking authority to obtain credit must be filed using the self-scheduling procedures set forth in L.B.R. 9002-1. Unless service is made electronically through the ECF system, the movant must serve the motion and semi-passive notice upon the persons specified under [F.R.B.P. 4001](#) and L.B.R. 4001-6.
- (b) *Credit Agreement.* Each motion for authority to obtain credit must be accompanied by the proposed credit agreement.
- (c) *Required Disclosure of Certain Provisions of Financing Motion, Order, or Stipulation - Chapter 9 or Chapter 11 Cases.* All motions seeking authorization to use cash collateral and all motions for authority to obtain credit - collectively, the “Financing Motions” - must:
 - (1) recite whether the proposed form of order, underlying cash collateral stipulation, or loan agreement contains any provision of the type indicated below;
 - (2) identify the location of any such provision in the proposed form of order, cash collateral stipulation, or loan agreement; and
 - (3) state the justification for the inclusion of such provision:
 - (A) Provisions that grant cross-collateralization protection - other than replacement liens or other adequate protection - to the prepetition secured creditor (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law).

- (B) Provisions or findings of fact that bind the estate or parties in interest with respect to validity, perfection, priority, or amount of the secured creditor's prepetition lien or debt or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order for relief and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters.
 - (C) Provisions that seek to waive any rights the estate may have under [11 U.S.C. § 506\(c\)](#).
 - (D) Provisions that grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under [11 U.S.C. §§ 544](#), [545](#), [547](#), [548](#), and [549](#).
 - (E) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided under [11 U.S.C. § 552\(b\)](#).
 - (F) Provisions that provide treatment for the professionals retained by a committee appointed by the United States trustee different from that provided for the professionals retained by the debtor with respect to a professional fee carveout, and provisions that limit the committee counsel's use of the carveout.
 - (G) Provisions that prime any secured lien without the consent of the lienholder.
 - (H) Provisions that release the secured creditor from lender liability.
 - (I) Provisions that grant the lender expedited relief from the automatic stay under [11 U.S.C. § 362](#) or relief from the automatic stay without further order of court.
- (d) *Summary of Essential Terms.* Any Financing Motion must provide a summary of the essential terms of the proposed use of cash collateral or financing, including:
- (1) the amount to be borrowed or advanced on both an interim and final basis;
 - (2) the terms of repayment;
 - (3) the interest rate;

- (4) the description of any collateral;
 - (5) events of default; and
 - (6) limitations on the use of funds.
- (e) *Budget.* Any Financing Motion must include a budget covering the time period during which the proposed financing will remain in effect. The budget must state in as much detail as is reasonably practical the amount of the projected receipts and disbursements during the period covered by the budget.
- (f) *Interim Relief.* If a Financing Motion is filed with the court on or shortly after the date of the order for relief, the court may grant interim relief pending review by parties in interest of the proposed debtor in possession financing arrangements. Interim relief will be granted only to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court will not approve interim financing orders that include any of the provisions previously identified under L.B.R. 4001-3(c)(3).
- (g) *Final Approval of Financing Motion.* A final order may be entered only after notice and hearing under [F.R.B.P. 4001](#). If formation of a creditors' committee is anticipated, a final hearing may not be held until at least fourteen (14) days following the organizational meeting of the creditors' committee contemplated by [11 U.S.C. § 1102](#) unless the court, upon motion, orders otherwise.

COMMENTS: *L.B.R. 4001-3 was amended effective December 1, 2009, to limit the detailed disclosures concerning motions seeking authority to use cash collateral or obtain credit to cases filed under Chapters 9 or 11.*

Rule 4001-4 *Filing a Motion Seeking to Prohibit or Condition the Use, Sale, or Lease of Property Other Than Cash Collateral.* Unless service is made electronically through the ECF system, the movant must serve the motion seeking to prohibit or condition the use sale, or lease of property and semi-passive notice upon the persons specified under [F.R.B.P. 4001](#) and L.B.R. 4001-6.

COMMENTS: *L.B.R. 4001-4 was amended effective September 1, 2014, to align with current noticing procedures. Motions to prohibit or allow the use of cash collateral are governed by L.B.R. 4001-2.*

Rule 4001-5 *Motions to Extend the Automatic Stay Under Section 362(c)(3) and Motions to Impose Automatic Stay Under Section 362(c)(4).*

- (a) *Contents.* If the stay is to be extended or imposed with regard to all creditors, then the motion must so indicate. If the motion seeks only to extend the stay or to impose the

stay as to particular creditors, then the motion must identify those particular creditors. The motion also must state with particularity why the later filing has been made in good faith.

- (b) *Service.* A motion that seeks to extend or impose the stay as to all creditors must be served upon all creditors. A motion that seeks to extend or impose the stay only as to particular creditors must be served upon those particular creditors.
- (c) *Affidavit.* The movant may file a verified affidavit setting forth the substantial changes in the financial or personal affairs of the debtor since the dismissal of the next most previous bankruptcy case. In the absence of timely filed objections, the court may enter an order extending the automatic stay without a hearing where a sufficient affidavit has been filed.

Rule 4001-6 *Service of Motions under [F.R.B.P. 4001](#).* In addition to the parties identified in [F.R.B.P. 4001](#), the following motions must also be served upon creditors listed on the schedules as holding claims secured by the asset(s) identified in the motion:

- (a) A motion for relief from the stay;
- (b) A motion seeking an order prohibiting or conditioning the use, sale, or lease of property;
- (c) A motion to use cash collateral;
- (d) A motion for authority to obtain credit;
- (e) Any agreement regarding any of the preceding motions;
- (f) A motion to extend, continue, or impose the automatic stay; or
- (g) A motion to confirm the termination or absence of the automatic stay.

Rule 4003-1 *Exemptions.*

- (a) *Notice of Response Date to Objection.* When an objection is filed to a debtor's exemptions, the clerk will give twenty-one (21) days notice by mail of the time fixed for filing a response to the objection.
- (b) *Hearing Date for Objection to Exemptions.* Except as provided in subdivision (c), the clerk will set a hearing date on the objection if a response is filed by the debtor.

- (c) *Request for Hearing Required.* If the chapter 13 trustee files an objection to exemptions, the clerk will not set a hearing date until requested by the debtor or the trustee.

Rule 4004-1 *Motion to Defer Entry of Discharge Order.* A motion to defer entry of the discharge order for the purposes of obtaining additional time to file ~~Official Form 23 (Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management)~~ **the Certification About a Financial Management Course (Official Form 423)** must indicate why debtor is unable to obtain and file the certification within the required time period.

Rule 4006-1 *Closing Chapter 7 or Chapter 13 Cases Without Discharge.* If the ~~Official Form 23 (Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management)~~ **Certification About a Financial Management Course (Official Form 423)** is not filed in accordance with [F.R.B.P. 1007\(b\)\(7\)](#) and [\(c\)](#) and the time limits contained therein, the clerk may close the case without the issuance of an order of discharge and notify creditors thereof.

Rule 4008-1 *Reaffirmation.*

- (a) *General Procedure.* A reaffirmation agreement must be substantially in compliance with [L.B.F. 4008-1\(a\)](#). A reaffirmation agreement must be accompanied by ~~Official Form 27 - Reaffirmation Agreement Cover Sheet~~ **the Cover Sheet for Reaffirmation Agreement (Official Form 427)**. If the presumption arises that the reaffirmation agreement will impose an undue hardship on the debtor, and if the presumption is not rebutted to the satisfaction of the court by a statement on the reaffirmation agreement that identifies additional sources of funds to make the agreed payments, the court will set the matter for hearing.
- (b) *Hearings.* Hearings will be held on all reaffirmation agreements filed by pro se debtors and debtors whose counsel has not signed the certification page of the agreement. Hearing will be held on any agreement which, in the judgment of the court, may impose an undue hardship on the debtor.

COMMENTS: *L.B.R. 4008-1 was amended effective December 1, 2009, to provide for the filing of a reaffirmation cover sheet in accordance with [F.R.B.P. 4008](#) and to delete the former requirement for submission of a proposed order complying with L.B.F. 4008-1(b), which form was eliminated as part of the amendments.*

**PART V
COURTS AND CLERKS**

Rule 5001-1 *Clerk's Office.* Except as otherwise ordered by the court, or when closed by federal or official holiday, the clerk's offices in Wilkes-Barre and Harrisburg will be open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Rule 5004-1 *Disqualification.*

(a) *Motion.* A request for disqualification of a judge must be made by written motion. If a hearing is set, the clerk will provide to the movant an order setting the hearing date. The movant must serve the order upon:

(1) the debtor; and

(2) if disqualification from the entire case is not sought, all parties that are engaged in litigation before the court with regard to an adversary proceeding or contested matter from which the basis for disqualification arose unless service is made on such parties electronically through the ECF system.

(b) *Oral Motion.* The motion may be made orally in open court if grounds for disqualification are first presented during proceedings before the judge.

Rule 5005-1 *Filing Papers - Requirements - Place of Filing.* Unless otherwise provided, a paper document that is permitted or required to be filed by the Local Bankruptcy Rules must be filed in the clerk's office. A paper document must not be filed with the judge or the judge's staff unless the bankruptcy clerk's office is closed. In the event a paper document is filed with the judge, the filing date must be noted thereon, and it must be transmitted to the clerk. A bankruptcy paper may be filed with the district court clerk's office only in an emergency.

COMMENTS: *Subpart (b) of L.B.R. 5005-1 was reworded and renumbered as L.B.R. 9018-1 effective December 1, 2011.*

Rule 5005-2 *Filing Papers - Number of Copies; Time-Stamped Copies.*

(a) *Petition and Supporting Documents.* In all chapters, only the original petition and supporting documents must be filed.

(b) *No Copies of Electronic Filings Required.* Except when paper copies are required by a local rule or by court order, when a petition, pleading, or any other paper is filed electronically, no copies are required.

- (c) *Stamped “Filed” Copies.* To receive a time-stamped copy of a document, the filing party must provide the clerk with a copy of the document and a self-addressed, stamped envelope.

Rule 5005-3 *Electronic Filing.*

- (a) *Filing of Documents.* Pursuant to [Miscellaneous Order 5:05-mp-50007](#), except as provided in paragraph (b) of this rule, documents must be filed, signed, and verified by electronic means in accordance with the [Administrative Procedures](#) available on the court’s website (www.pamb.uscourts.gov). A document filed under this rule constitutes a written document for the purpose of these Local Bankruptcy Rules, the Federal Rules of Bankruptcy Procedure, and [11 U.S.C. § 107](#).
- (b) *Filing of Proofs of Claim.* Notwithstanding the requirements of paragraph (a), pursuant to [Miscellaneous Order 5:14-mp-00003](#), claims may be filed, amended, or withdrawn through the court’s Electronic Proof of Claim (ePOC) system without the need to register or login as a user in the court’s ECF system (CM/ECF). Any claim filed, amended, or withdrawn electronically through the ePOC system will constitute the filer’s approved signature and have the same force and effect as if the authorized individual signed a paper copy of the proof of claim form, amendment, or withdrawal.
- (c) *Temporary Paper Filing.* An attorney who is not a registered CM/ECF filer may file initial papers in person, by facsimile, or by email after seeking permission from the court as set forth in [Miscellaneous Order 5:05-mp-50007](#). Before any additional papers are filed, the attorney must apply for and obtain a CM/ECF login and password. Registration may be completed through the court’s website: www.pamb.uscourts.gov using “Electronic Filing Registration” under the Court Info tab.
- (d) *CM/ECF Filer Systems Failure.* A registered CM/ECF filer may file papers in person, by facsimile, or by email for up to seventy-two (72) hours when electronic filing is not possible due to a failure in the CM/ECF filer’s systems, including, without limitation, hardware, software, or internet connection. Any filing made by means other than CM/ECF must be accompanied by an affidavit stating why the document was not filed electronically.

COMMENTS: L.B.R. 5005-3 was amended effective June 1, 2016, to provide for temporary paper filings by an attorney who is not a registered CM/ECF filer and to provide for temporary paper filings for a registered CM/ECF filer who cannot file electronically due to a failure of his or her own systems.

Rule 5005-4 *Filings During Technical Failures.* In the event of a technical failure, as defined in L.B.R. 9001-1, an electronic filer may use any of the following filing methods:

- (a) file the documents as a PDF attachment to an email sent to the following address: PAMB_ECF_Failure@pamb.uscourts.gov;
- (b) file the documents in person by bringing the documents to the clerk's office in paper, accompanied by an electronic storage format (i.e., flash drive, CD-ROM) that contains the document in PDF format without any password requirement;
- (c) file the documents via facsimile to: 570-829-0249 (Wilkes-Barre) or 717-901-2822 (Harrisburg); or
- (d) seek appropriate relief from the court or proceed pursuant to any generally applicable order that may have been entered addressing the technical failure.

Electronic filers are cautioned that the court's ability to grant relief may be limited by [F.R.B.P. 9006\(b\)](#).

COMMENTS: L.B.R. 5005-4 was adopted effective June 1, 2016, to provide for filing alternatives in the event of a technical failure as now defined in L.B.R. 9001-1.

Rule 5005-4 5 *Filing Papers After Hours.*

- (a) *After Hours Filings.* Except as otherwise authorized by the court, non-ECF filers may file petitions and other papers by facsimile only pursuant to the provisions of this rule.
- (b) *Time and Manner of Filing.* Papers may be filed by facsimile to the Harrisburg or Wilkes-Barre facsimile numbers indicated on the court's website (www.pamb.uscourts.gov) when the clerk's office is not open. After 4:00 p.m. EST, and before Midnight (12:00 a.m.) EST, transmit by facsimile only the first page and the signature page of the document.
- (c) *Filing of Original Document.* The entire original paper document, together with any required filing fee, must be filed in person and time-stamped by the clerk no later than 4:00 p.m. EST on the next business day after the facsimile filing when the clerk's office is open.
- (d) *Clerk's Procedures Concerning Facsimile Documents.* If the original document is not timely filed after the facsimile transmittal, the clerk will note that fact and the facsimile will have no force or effect. The clerk's office will not acknowledge the filing of a document or assign a case number or adversary number to a document unless the original is timely filed pursuant to the provisions of this rule. Upon timely receipt of the original document and any required fee, the clerk will stamp the following notation on the document: "This document is deemed filed on _____ (date) pursuant to L.B.R. 5005-4 5 - Filing Papers After Hours." Documents filed in accordance with

this rule will be deemed filed on the date and at the time printed on the document by the facsimile machine in the clerk's office which received the facsimile.

Rule 5010-1 *Reopening Cases.* A motion to reopen a case, which may be granted summarily, must be accompanied by the appropriate filing fee unless waived by the court. The filing fee may be waived if the case is opened to correct an administrative error, to assert the protection of the discharge injunction, or for cause shown. The motion must be served on:

- (a) the debtor; and
- (b) any other party as directed by the court.

Rule 5011-1 *Withdrawal of Reference.*

- (a) *Filing of Motion.* The movant must file a motion, proposed order, and supporting brief with the clerk of the bankruptcy court. The clerk of the bankruptcy court will transmit the motion and supporting documents to the district court. All documents filed after the initial motion, proposed order, and supporting brief must be filed with the clerk of the district court.
- (b) *Motion Contents.* The motion must address the following:
 - (1) whether the proceeding for which withdrawal is being sought is core under 28 U.S.C. § 157(b) or non-core under 28 U.S.C. § 157(c) and, if core, whether the bankruptcy court lacks the constitutional authority to enter a final order or judgment;
 - (2) whether withdrawal of the reference is permissive under 28 U.S.C. § 157(d);
 - (3) whether withdrawal of the reference is mandatory under 28 U.S.C. § 157(d).
- (c) *Notice of the Motion.* The movant must provide notice to all creditors and parties in interest if the motion requests withdrawal of the entire bankruptcy case or provide notice to the parties in the adversary proceeding if the motion requests withdrawal of an adversary proceeding or counts within the proceeding.
- (d) *Objections to the Motion.* Any party opposing the motion must file with the district court and serve on the movant and other interested parties an objection and brief within fourteen (14) days after service of the motion and a supporting brief.
- (e) *Bankruptcy Court Report and Recommendations.* After the time for filing objections has expired, the bankruptcy judge assigned to the bankruptcy case will file with the district court, within fourteen (14) days, a report and recommendation on the motion

to withdraw the reference. Once the report and recommendation is submitted by the bankruptcy judge, any party may object to the report and recommendations within fourteen (14) days after being served with a copy thereof. Thereafter, the motion will be ripe for disposition by the district court.

- (f) *Procedure After Grant of the Motion.* If the district court grants the motion, all further proceedings will be governed by the Rules of Court for the Middle District of Pennsylvania.

COMMENTS: *L.B.R. 5011-1 was adopted effective June 1, 2016, to provide the procedure for filing a motion to withdraw the reference.*

PART VI
COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6002-1 *Accounting by Prior Custodian of Property of the Estate.* A prior custodian must submit a report and accounting to the United States trustee that contains sufficient detail to inform the trustee or any other party in interest of the custodian's activities while in possession of what is now the property of the estate. No particular format is required under this rule.

Rule 6004-1 *Use, Sale, or Lease of Property.*

- (a) *Sale on Notice.* A sale of assets, other than in the ordinary course of business, under and subject to liens, may be conducted, on notice, pursuant to [11 U.S.C. § 363\(b\)](#). The notice of sale is subject to the notice requirements of this rule.
- (b) *Sale Upon Motion.* Any sale on motion is subject to the notice requirements of this rule. Any motion for a free and clear sale is subject to the notice requirements of this rule and to the additional requirements of L.B.R. 6004-5.
- (c) *Sale Notices.* When the proposed use, sale, or lease of property is upon notice or motion (unless subject to the exceptions in [F.R.B.P. 6004\(d\)](#) or L.B.R. 9075-1), the required notice must include:
 - (1) the caption of the case;
 - (2) the name and address of the seller;
 - ~~(3) the place, date, and time of the sale;~~
 - ~~(4) the hearing date;~~
 - (5 3) a general description of the property to be sold;
 - ~~(6) a statement describing where a complete description or inventory of the property may be obtained or examined;~~
 - (7 4) the place, date, and time the property may be examined prior to the sale or an explanation of how a prospective buyer **an interested party** may be afforded an opportunity to examine the property prior to the sale;
 - (8 5) the terms and conditions of sale, including the terms of any pending offers, or minimum bid requirements, or breakup fee provisions;
 - (6) **the date, time, and place of any public sale;**

- (97) whether the sale is subject to higher and better offers **and how such offers must be submitted;**
- (108) in any private sale, the identity of the purchaser and any affiliation or relationship with the debtor or an insider of the debtor;
- ~~(11) whether the sale will be advertised and, if so, how and when;~~
- (129) the last date by which objections to the sale must be filed with the court - which must be not less than twenty-one (21) days after the notice is mailed, unless the court shortens the time under [F.R.B.P. 9006](#) **or directs another method of giving notice; and**
- (1310) a statement that inquiries regarding the sale should be directed to the seller or their counsel or agent and not to the clerk.
- (d) *Service.* Unless the court directs otherwise, and unless service is made electronically through the ECF system, the notice of sale must be served on the following:
- (1) the debtor;
 - (2) the trustee, if any;
 - (3) indenture trustees, if any;
 - (4) all creditors;
 - (5) all committees appointed under the Bankruptcy Code, if any;
 - (6) the United States trustee;
 - (7) the United States as required by [F.R.B.P. 2002\(j\)](#); and
 - (8) all holders of liens or encumbrances against the property.
- (e) *Address for Service.* Service of a notice of sale must be made at the address set forth in any request for notices filed under [F.R.B.P. 2002\(g\)\(1\)](#). If a request has not been filed, the notice must be served under [F.R.B.P. 2002\(g\)\(2\)](#) unless a different address is listed in a later-filed proof of claim. In the latter instance, the address stated in the proof of claim must be used.

Rule 6004-2 *Objections to Section 363(b) Sale.* Any party who objects to a proposed sale must file an objection within the time period fixed by the notice of sale. The objecting party must serve a copy of the objection on the seller and the seller's counsel of record.

Rule 6004-3 *Public Sale Bidding Procedures in a Chapter 11 Case.* In the case of a public sale conducted in a chapter 11 case by other than a professional auctioneer, the seller must file a sale procedure motion which will detail the bidding procedures, including the following:

- (1) any minimum bid requirements;
- (2) any minimum bid increment requirements;
- (3) whether any bidder who has a contractual right to a topping or breakup fee will receive a credit equal to the breakup or topping fee when bidding on the property; and
- (4) a provision that all bidding must take place outside the presence of the court.

Rule 6004-4 *Special Sale Provisions in a Chapter 11 Case.*

- (a) *Breakup/Topping Fees and Expense Reimbursement.* When the seller in a chapter 11 case is seeking court approval of a breakup or topping fee or other bidding protections (such as the estate's proposed payment of out-of-pocket expenses incurred by a bidder or contract purchaser), the sale motion must include the following:
 - (1) the name of the party entitled to the breakup or topping fee;
 - (2) the dollar amount or the method to calculate the breakup or topping fee; and
 - (3) any relationship between the seller and the party eligible for the breakup or topping fee.
- (b) *Sale to Insider.* If the seller seeks court approval of a sale to an insider of the debtor, the motion must include the following information:
 - (1) the name of the insider;
 - (2) the relationship of the insider to the debtor; and
 - (3) the measures that have and will be taken to ensure the fairness of the sale process.
- (c) *Agreements with Management.* Any motion seeking approval of the private sale of an ongoing business must disclose the following:

- (1) whether the proposed purchaser has entered into any agreements with management or key employees concerning compensation or future employment;
 - (2) the material terms of any agreements between the proposed purchaser and management or key employees; and
 - (3) what measures have or will be taken to ensure the fairness of the sale in light of such agreements with management or key employees.
- (d) *Tax Exemption.* If the debtor is seeking to have a sale declared exempt from taxes under [11 U.S.C. § 1146\(a\)](#), the sale motion must disclose the type of tax (i.e., recording tax, stamp tax, use tax, capital gains tax) for which the exemption is sought. The debtor must also identify the state or states in which the affected property is located. The sale motion must state whether or not the chapter 11 plan has been confirmed.
- (e) *Relief from [F.R.B.P. 6004\(h\)](#).* If the seller seeks relief from the stay imposed by [F.R.B.P. 6004\(h\)](#), the sale motion must state the basis for the request.

COMMENTS: *L.B.R. 6004-4(d) was amended effective December 1, 2009, to comply with the decision of Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc., 128 S.Ct. 2326 (U.S. 2008).*

Rule 6004-5 *Sales of Property Free and Clear of Liens - Section 363(f).*

- (a) *Notice.* All free and clear sales are subject to the applicable notice requirements of L.B.R. 6004-1(b), (c), and (d).
- (b) *Motion.* A sale of property free and clear of liens must be commenced by motion, except as provided in subdivision (c) below. A motion for a free and clear sale must name as respondents all parties claiming an interest in the property.
- (c) *Complaint.* A sale of property free and clear of liens must be brought as an adversary proceeding and commenced by a complaint under Part VII of the Federal Rules of Bankruptcy Procedure and Part VII of the Local Bankruptcy Rules when the seller also seeks:
 - (1) to determine the validity, priority, or extent of a lien or other interest in property, other than the avoidance of a lien or other transfer of property exempt under [11 U.S.C. § 522\(f\)](#); or
 - (2) to obtain approval under [11 U.S.C. § 363\(h\)](#) for the sale of both the interest of the estate and of a co-owner in the property unless the concurrence of the co-owner has been obtained.

- (d) *Order.* When a motion is filed for a sale free and clear of liens, the clerk will issue an order fixing a response date and a hearing date. A hearing will be held only if a responsive pleading is timely filed, unless a hearing is requested by the moving party or is ordered by the court. Otherwise, an order granting the relief requested will be entered without a hearing.
- (e) *Service of Motion.* The seller must serve a copy of the motion and the order referred to in subparagraph (d) upon all lienholders and other parties claiming an interest in the property and their counsel of record.
- (f) *Service of Notice.* Unless the court directs otherwise, the seller must serve the notice on the respondent and any parties referenced in L.B.R. 6004-1(c), at least twenty-one (21) days before the hearing on the sale.

Rule 6005-1 *Appraisers, Real Estate Agents, and Auctioneers.*

- (a) *Form of Application.* All applications must conform to L.B.R. 2014-1.
- (b) *Payment of Compensation.* An appraiser, real estate agent, or auctioneer may receive compensation and reimbursement of expenses from the proceeds of any sale approved by the court without filing a separate application for the approval of compensation and expenses under the following conditions:
 - (1) the terms for the payment of compensation and reimbursement of expenses were disclosed in the application for employment;
 - (2) the order approving retention of the appraiser, real estate agent, or auctioneer approved the compensation arrangement proposed in the application for employment; and
 - (3) the order approving the sale authorized the payment of compensation and expenses to the appraiser, real estate agent, or auctioneer.

Rule 6006-1 *Executory Contracts.*

- (a) *Motion.* A motion for the assumption, rejection, or assignment of an executory contract or unexpired lease must be filed in conformity with [F.R.B.P. 6006](#).
- (b) *Notice.* A notice for the assumption, rejection, or assignment of an executory contract or unexpired lease must contain the following:
 - (1) a date by which objections may be filed;

- (2) a statement that in the event there are no objections filed an order may be entered approving the proposed assumption, rejection, or assignment without further notice; and
 - (3) the hearing date and time when any objection to the motion is to be heard.
- (c) *Response.* No response is required to an objection.

Rule 6007-1 *Abandonment or Disposition of Property.*

- (a) *Proposed Abandonment.* A trustee or debtor in possession may abandon property by filing a notice of intent to abandon property with the clerk. The notice must contain sufficient information to allow parties in interest to make an informed decision regarding whether abandonment of a particular asset is in the best interest of the estate. The notice must provide that parties have fourteen (14) days from the mailing of the notice to file objections to the proposed abandonment. Unless service is made electronically through the ECF system, the trustee or debtor in possession must serve the passive notice upon the persons specified under [F.R.B.P. 6007](#).
- (b) *Objection to Abandonment.* An objection to a proposed abandonment of property of the estate must state specific grounds for the objection. No response is required to an objection.
- (c) *Filing of Motion to Compel Abandonment.* Unless service is made electronically through the ECF system, the movant must serve the motion to compel abandonment and passive notice upon any party against whom relief is sought.

**PART VII
ADVERSARY PROCEEDINGS**

Rule 7002-1 *District Court Rules.* Local Rules of the United States District Court for the Middle District of Pennsylvania LR 7.1 through 7.8 and 15.1 (www.pamd.uscourts.gov) apply in adversary proceedings unless modified by these rules.

COMMENTS: L.B.R. 7002-1 was amended effective September 1, 2014, to make District Court Rule 15.1, concerning amended pleadings, applicable to adversary proceedings.

Rule 7003-1 *Adversary Proceeding Cover Sheet.* Any paper complaint filed under Part VII of the Federal Rules of Bankruptcy Procedure must be accompanied by an Adversary Proceeding Cover Sheet (Official Form ~~B104~~ 1040), which is available for download and printing at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

Rule 7005-1 *Filing of Discovery Materials.*

- (a) *Discovery Motions.* A party seeking a protective order, an order to compel discovery, or other relief under [F.R.B.P. 7026](#) must attach to the motion only that portion of the deposition, interrogatory, request for document, or request for admissions that is the subject of the objection. An attachment to the motion must conform with the requirements of L.B.R. 5005-3 and any administrative order issued regarding electronic case filing.
- (b) *Documentation Not in Record.* When discovery documentation not previously in the record is needed for appeal purposes, upon motion and order of the court, or by stipulation of counsel, the necessary discovery papers must be filed with the clerk. See Local Rule 5.4(d) of the Local Rules of the United States District Court for the Middle District of Pennsylvania (www.pamd.uscourts.gov).
- (c) *Original Response and Certificate of Service.* A party who serves a discovery request must retain the original response as its custodian. Certificates of service of discovery materials must not be filed separately with the clerk. The original of any deposition upon oral examination must be retained by the party taking such deposition. See Local Rule 5.4(b) of the Local Rules of the United States District Court for the Middle District of Pennsylvania (www.pamd.uscourts.gov).

Rule 7007-1 *Motions in Adversary Proceedings.*

- (a) *Written Motion.* A motion must be in writing unless made during a hearing or trial.
- (b) *Grounds and Relief to be Stated.* A motion filed in an adversary proceeding must contain a descriptive title of the motion in addition to the complete adversary caption.

The caption must be substantially in compliance with the Caption for Use in Adversary Proceeding (Official Form 416D) conform to [L.B.F. 9004-3](#).

- (c) *Response.* The response to any motion must be filed and served within fourteen (14) days after service of the motion. If no response is timely filed, the motion may be deemed uncontested, and the court may dispose of the motion.
- (d) *Continuances.* A request for continuance of a trial date must be made in conformity with L.B.R. 9013-3.
- (e) *Hearing.* Oral argument or hearing on a contested motion will be held only if requested by the court.
- (f) *Proposed Order.* A proposed order of court as required under L.B.R. 9013-1(b) must be filed as an attachment to any motion and other pleading requesting relief in accordance with the procedures set forth in the [Miscellaneous Order 5:05-mp-50007](#) and the [Administrative Procedures](#) available on the court's website (www.pamb.uscourts.gov).

Rule 7008-1 *Statement of Consent to Final Orders or Judgment.* In any adversary proceeding, each complaint, counterclaim, cross-claim, or third-party complaint must contain a statement that the pleader does or does not consent to the entry of final orders or judgment by the bankruptcy court.

Rule 7012-1 *Statement of Consent to Final Orders or Judgment in Responsive Pleadings.* In any adversary proceeding, each responsive pleading must contain a statement that the pleader does or does not consent to the entry of final orders or judgment by the bankruptcy court.

Rule 7016-1 *Pre-Trial Procedure.*

- (a) *Applicability of [Fed. R. Civ. P. 16\(b\)](#).* Unless the court directs otherwise, an adversary proceeding is exempt from the provisions of [Fed. R. Civ. P. 16\(b\)](#), as incorporated in [F.R.B.P. 7016](#).
- (b) *Scheduling Order.* Notwithstanding subdivision (a), the court generally will issue a scheduling order.
- (c) *Pre-trial Motions.* The court may dispose of pre-trial motions in summary fashion at any time during their pendency.

Rule 7021-1 *Misjoinder and Non-Joinder of Parties.* When an adversary is severed into two or more proceedings, a separate filing fee is payable to the clerk for each severed proceeding.

COMMENTS: L.B.R. 7024-2 was eliminated effective September 1, 2014, because the subject matter is covered by [F.R.B.P. 9005.1](#).

Rule 7041-1 *Notice of Dismissal of Adversary Proceeding.* Before any adversary proceeding is involuntarily dismissed pursuant to [F.R.B.P. 7041](#), a thirty (30) day notice will be given by the clerk to each party whose claim is to be dismissed and to the counsel of record for that party, if any.

Rule 7055-1 *Default - Failure to Prosecute.* Subject to L.B.R. 7041-1, an adversary complaint may be dismissed if neither a response nor a motion for default judgment has been filed within forty-five (45) days after the response date to the complaint. If a motion for default judgment is filed, the court may enter judgment by default against the defendant seven (7) days after the motion has been served on the defendant.

Rule 7055-2 *Order of Default.* The order of default may award damages for the amount to which the plaintiff is entitled if it is a sum certain or can be made certain by computation. If damages cannot be computed from the complaint, they must be assessed at a hearing at which the issues are limited to the amount of the damages.

Rule 7056-1 *Summary Judgment - Applicability of Local Rule 56.1.* Local Rule 56.1 for the United States District Court for the Middle District of Pennsylvania (www.pamd.uscourts.gov) applies in adversary proceedings.

Rule 7067-1 *Registry Funds.*

(a) *Deposit Funds into Court Registry Account.* A party who wishes to deposit funds while litigation is pending may move the court to have such funds deposited into the court's registry account. The movant must attach a proposed order directing investment, which includes the following:

- (1) the amount to be invested; and
- (2) the mode of deposit (i.e., check, wire transfer).

(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. The Director of the United States Courts is designated as custodian for CRIS. The Director or the Director's designee will perform the duties of the custodian. CRIS will be the only investment mechanism authorized. Funds held in the CRIS remain subject to the control and jurisdiction of the court.

(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 in an account in the name and credit of the Director of the Administrative Office of the United States Courts. Income generated from fund investments will be distributed to each case based on the ratio each account’s principal and earnings has to the aggregate principal and income total in the fund. Income generated from fund investments will be distributed to each case. Reports showing the interest earned and the principal amounts contributed in each case will be made available to litigants and counsel.

- (d) *Motion to Withdraw Funds.* In order to withdraw deposited funds, a motion for disbursement of invested registry funds and a proposed order must be filed with the court. The proposed order for disbursement of invested registry funds must include the name and address of the payee in addition to the total amount of the principal and interest (if the interest is not known, the order may read “plus interest”) that will be disbursed to each payee.
- (e) *Order for Payment.* After entry of an order for disbursement, the parties to whom funds are to be disbursed must 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.
- (f) *Deduction of Fees.* The custodian is authorized and directed to deduct the investment services fee for the management of investments in CRIS and the registry fee for maintaining accounts deposited with the court. The investment services fee is assessed from interest earnings to the pool according to the Court’s Miscellaneous Fee Schedule and is to be assessed before a pro rata distribution of earnings to court cases. The registry fee is assessed by the custodian from each case’s pro rata distribution of the earnings and is to be determined on the basis of the rates published by the Director of the Administrative Office of the United States Courts as approved by the Judicial Conference of the United States.

PART VIII
APPEALS TO DISTRICT COURT OR
BANKRUPTCY APPELLATE PANEL

Rule 8006-1 *Designation of Record.* Each designation of items to be included in the record of appeal must clearly indicate each document to be included in the record by listing its title, filing date, and document number, if any, as it appears on the case or adversary docket.

Rule 8007-1 *Completion of Record.* The clerk is not responsible for the failure to transmit items not designated in accordance with L.B.R. 8006-1.

**PART IX
GENERAL PROVISIONS**

Rule 9001-1 *Definitions.* Unless inconsistent within the context of a particular rule, the following terms are defined for the purposes of the Local Bankruptcy Rules and Local Bankruptcy Forms as follows:

- (a) “*Amended plan*” means a plan modified under the provisions of [11 U.S.C. §§ 942, 1127, 1223, 1229, 1323, and 1329](#). The terms “modified” and “amended” are used interchangeably.
- (b) “*Chapter*” means one of the chapters of Title 11 of the Bankruptcy Code.
- (c) “*Clerk*” means the office of the Clerk of the United States Bankruptcy Court for the Middle District of Pennsylvania.
- (d) “*Contract amount*” means the amount of principal and interest payable each month under the terms of a note secured by a mortgage without the inclusion of late fees or other default fees or charges.
- (e) “*Counsel of record*” means any attorney who has entered an appearance on the docket of a bankruptcy case or who has filed a paper on behalf of a party. An attorney remains counsel of record until an order authorizing withdrawal has been entered or another attorney has entered an appearance on behalf of the party.
- (f) “*Electronic filer*” means a filing user registered with the clerk to file, serve, and receive documents through the electronic filing system established by the United States Bankruptcy Court for the Middle District of Pennsylvania.
- (g) “*F.R.B.P.*” means [The Federal Rules of Bankruptcy Procedure](#).
- (h) “*Hearing required notice*” is a notice that may provide an objection/response deadline and sets the matter for hearing. The hearing will take place at the date, time, and location indicated in the notice regardless of whether or not objections/responses are filed.
- (i) “*Paper filer*” means an individual or entity that is not an electronic filer and files, serves, and receives paper documents in compliance with all rules and court orders.
- (j) “*Party in interest*” means a person or entity who may be affected by a bankruptcy proceeding. In these rules, a party in interest also includes a creditor.
- (k) “*Passive notice*” is a notice stating that if no response is filed, the court may enter the requested relief without further notice or hearing.

- (l) “*Retainer agreement*” means an agreement between a client and an attorney in which the client deposits funds with the attorney for services to be performed whether entered before the filing of a bankruptcy petition or during the pendency of the case.
- (m) “*Schedules and statements*” include all documents required to be filed by a debtor under [11 U.S.C. § 521](#).
- (n) “*Semi passive notice*” is a notice setting an objection/response deadline and a proposed hearing date if objections/responses are filed. If no objections/responses are filed, the court may enter an order without conducting a hearing. If objections/responses are filed, the matter will proceed to hearing at the date, time, and location indicated in the notice. If a default order has not been signed and entered on the docket, the parties or their counsel are required to appear in court.
- (o) “*Technical failure*” means any day on which the court’s CM/ECF site is unable to accept filings continuously over a period of more than two (2) hours after 7:00 a.m.

COMMENTS: *L.B.R. 9001-1 was amended effective September 1, 2014, to add definitions for the terms “Hearing required notice” and “semi passive notice”.*

Rule 9002-1 *Self-Scheduled Matters.*

- (a) *Filing a Self-Scheduled Matter.* When a motion or other document is filed using self-scheduling, the electronic filer must use the Courtroom Hearing Scheduler (“CHS”).
- (b) *Self-Scheduled Matters.* A list of the matters that may be self-scheduled, as well as the filing procedures, are posted on the court’s website under the Self-Scheduling Hearings button. (www.pamb.uscourts.gov).
- (c) *Matters Which Cannot Be Self-Scheduled.* No matters other than those listed under the Self-Scheduling Hearings button can be self-scheduled.

COMMENTS: *L.B.R. 9002-1 was amended effective September 1, 2014, to refer electronic filers to the court’s website to determine what matters can and cannot be self-scheduled.*

Rule 9003-1 *Ex Parte Relief.* The following requests may be considered ex parte by the court:

- (a) for conversion or dismissal under [11 U.S.C. §§ 1208\(b\)](#) or [1307\(b\)](#);
- (b) for entry of a wage order under [11 U.S.C. §§ 1225\(c\)](#) or [1325\(c\)](#);
- (c) for approval to pay filing fees in installments;
- (d) for waiver of filing fees for documents including the bankruptcy petition;

- (e) to limit notice;
- (f) for admission *pro hac vice*;
- (g) for emergency relief;
- (h) for an extension of time to file documents required under [11 U.S.C. § 521](#);
- (i) for protection from or application of disclosure of information under [11 U.S.C. § 107](#); and
- (j) for relief after dismissal of an involuntary case.

Rule 9004-1 *Caption of Pleadings.* Unless additional information is required under [11 U.S.C. § 342\(c\)](#), any pleading filed with the clerk in a contested matter must contain a caption substantially in compliance with [L.B.F. 9004-1](#). Unless additional information is required under [11 U.S.C. § 342\(c\)](#), any pleading filed with the clerk in an adversary proceeding must contain a caption substantially in compliance with **the Caption for Use in Adversary Proceeding (Official Form 416D)**. ~~[L.B.F. 9004-2](#)~~.

COMMENTS: *L.B.R. 9004-1 was amended effective June 1, 2016, to provide for the use of Official Form 416D - Caption for Use in Adversary Proceeding and to eliminate L.B.F. 9004-2.*

Rule 9010-1 *Attorneys - Notice of Appearance.*

- (a) *General Appearance.* An attorney who files with the clerk any application, motion, stipulation, or other document, other than as set forth in subdivision (b), is deemed to have entered an appearance for the party on whose behalf the document is filed.
- (b) *Limited Appearance.* An attorney filing a proof of claim or interest is deemed to have entered an appearance only for the purpose of any objection that may be filed to that claim.
- (c) *Change of Address.* When attorneys, or parties representing themselves, change their e-mail or physical addresses, they are required to provide notification as follows:
 - (1) Electronic filers must immediately update their addresses in the ECF system. If an address changes in a specific case, electronic filers must docket a change of address in each case in which the change should appear to enable the clerk to update the information.
 - (2) Paper filers must notify the clerk in writing of their new address so that the clerk may enter it in the ECF system. If an attorney has entered an appearance

in more than one case, he also must file with the clerk a listing of all such cases so the new address may be entered by the clerk on the docket of each case.

- (d) *Withdrawal of Appearance.* The debtor's attorney or an attorney in a pending adversary or contested matter may not withdraw his or her appearance except upon motion, after hearing and by order of the court, unless another attorney eligible to appear before the court enters his or her appearance simultaneously with the request for withdrawal of appearance. If an attorney leaves a law firm and the firm remains counsel for certain cases, the law firm must submit a list of cases that the firm is retaining with its current address. If the firm has not entered an appearance in a case, it must enter an appearance in the cases it is retaining. An attorney may not submit a change of address as a substitute for filing a motion to withdraw.
- (e) *Notice to Parties.* Unless service is made electronically through the ECF system, an attorney who files a request to note change of address must mail a copy of same to any attorney who has entered an appearance in an adversary proceeding or contested matter that is pending at the time the request is filed.

Rule 9010-2 *Facsimile and E-mail Addresses.* In addition to the requirements of [F.R.B.P. 9010\(b\)](#), an attorney must provide the attorney's facsimile number and e-mail address, if any.

Rule 9011-1 *Attorneys' Duties.* Subject to L.B.R. 9010-1(b) an attorney who files a petition in bankruptcy on behalf of a debtor, or who later enters an appearance on behalf of a debtor - other than as special counsel - is counsel of record in all matters arising during the administration of the case.

Rule 9013-1 *Motion Practice.*

- (a) *Title of Motion and Answer.* The title of each motion must identify the party filing the motion and the nature of the relief sought. Any answer filed must identify the party filing the answer and the motion to which the party is responding. The answer must include in the caption the docket number reference of the document to which the party is responding.
- (b) *Orders to Accompany Motions.* Each motion must be accompanied by a proposed form of order which, if entered by the court, would grant the relief sought by the motion in accordance with the procedures set forth in the [Miscellaneous Order 5:05-mp-50007](#) and the [Administrative Procedures](#) available on the court's website (www.pamb.uscourts.gov).
- (c) *Service of Motion - Generally.* Unless service is made electronically through the ECF system, the moving party must serve a copy of its motion and attachments on the following:

- (1) the respondent;
 - (2) the debtor;
 - (3) any committee appointed pursuant to [11 U.S.C. § 1102](#); and
 - (4) such other entities as the court may direct.
- (d) *Service of Motion to Dismiss or Convert.* Unless service is made electronically through the ECF system, the moving party must serve a copy of a motion to dismiss or convert a case to another chapter on the debtor and on debtor's counsel, in addition to those parties listed in paragraph (c).
- (e) *Service of Motion Against Counsel.* Unless service is made electronically through the ECF system, the moving party must serve a copy of a motion seeking sanctions or other relief against a party's counsel on the party and on counsel.

Rule 9013-2 *Certification of Service.* In accordance with the procedures set forth in the [Miscellaneous Order 5:05-mp-50007](#) and the [Administrative Procedures](#) available on the court's website (www.pamb.uscourts.gov), each document filed with the court must include a certificate of service containing the following information as to any paper filers on which service has been made:

- (a) the title of the paper served;
- (b) the names and addresses of all persons upon whom the paper has been served;
- (c) the entities the persons served represent; and
- (d) a description of when and how service was made.

Rule 9013-3 *Continuances.* A request for a continuance must be made in writing and contain a certification that counsel making the request has sought the concurrence of all interested parties and that concurrence has been either granted or denied. A request may be denied if concurrence has not been obtained. If a request is the first request for a continuance of the matter, the request should be submitted using [L.B.F. 9013-3](#). All further requests for a continuance must be made by motion. Requests received by the court within twenty-four (24) hours of the hearing will not be considered except in emergency situations, and the request will be granted only in the court's discretion. A party who obtains a continuance must immediately notify other parties of the continuance by email, telephone, facsimile transmission, or first class mail, whichever method is necessary to ensure that notice is received no later than twenty-four (24) hours prior to the time set for the hearing.

COMMENTS: L.B.R. 9013-3 was amended effective December 1, 2009, to provide that a continuance request may be denied if concurrence has not been obtained from all interested parties.

Rule 9014-1 *Default and Summary Judgment.* [F.R.B.P. 7055](#) and [7056](#) as well as L.B.R. 7055-1 and 7002-1 do not apply in contested matters except as otherwise provided in the Local Rules. If a response is required but none is filed, the court may, without hearing, grant the relief requested in the motion.

Rule 9015-1 *Jury Trials.* The parties may consent to have a jury trial conducted by a bankruptcy judge under [28 U.S.C. § 157\(e\)](#) by jointly or separately filing a statement of consent no later than thirty (30) days after time of demand or designation, whichever last occurs, if right to a jury trial applies; a timely demand has been filed under [Fed. R. Civ. P. 38\(b\)](#); and the bankruptcy judge has been specially designated to conduct the jury trial.

Rule 9016-1 *Subpoena.* A subpoena may be issued by an attorney as an officer of the court under [Fed. R. Civ. P. 45\(a\)\(3\)](#). The clerk must issue a subpoena signed, but otherwise blank, when requested by a pro se party.

Rule 9018-1 *Documents Under Seal.* Any party who seeks to file documents under seal must file a motion to that effect. The documents proposed to be filed under seal must be placed in a prominently marked envelope with a cover sheet attached containing the case or adversary caption, related docket number of the motion to file under seal, title of the document to be filed under seal, and the legend “DOCUMENTS TO BE KEPT UNDER SEAL” in bold print. The envelope must be delivered directly to the respective Judge’s chambers. The court will keep the documents segregated and under seal until the motion is decided. If the court grants the motion to file under seal, the clerk will electronically docket the cover sheet and will keep the documents segregated and under seal until the case or adversary proceeding is closed, at which time the sealed documents will be returned to the party that filed them. If the court denies the motion to file under seal, the clerk will return the segregated, proposed sealed documents to counsel for the moving party without any disclosure to third parties and such documents will not become part of the record in the case unless they are otherwise separately filed of record in accordance with the applicable rules.

Rule 9019-1 *Settlements and Agreed Orders.*

- (a) *Settlement of Adversary Matters and Contested Matters.* In an adversary proceeding or contested matter, whenever the parties have reached a settlement, they must file a stipulation resolving the matter before the hearing date, submit a Request to Remove from the Hearing/Trial List ([L.B.F. 9019-1](#)), or announce the settlement at the hearing set on the matter. If a Request to Remove form is filed, within the time specified in the form, the moving party or plaintiff must file a stipulation or stipulated order and any

requisite motion to compromise or settle. Failure to file a stipulation or stipulated order may result in the dismissal of the matter or proceeding. A motion to extend the time to comply with this rule or to re-list the matter for hearing may be filed within the period specified for filing a stipulation or stipulated order in the Request to Remove form, but the motion will be granted only upon cause shown.

- (b) *Hearing.* When a matter has been settled and a stipulation has been filed or is expected to be filed within a period not to exceed sixty (60) days, the hearing before the court may be stricken by filing a Request to Remove form ([L.B.F. 9019-1](#)). A Request to Remove form must be filed with the court no later than twenty-four (24) hours before the hearing.

Rule 9019-2 *Alternative Dispute Resolution.*

- (a) *Setting Mediation.* The court may set a case for mediation provided consideration is given to any reasons advanced by the parties as to why such mediation would not be in the best interest of justice. Once set for mediation, the matter can be removed from mediation by the court or on application by the mediator.
- (b) *Request for Mediation.* The parties may request a case be assigned by the court to mediation by completing and filing [L.B.F. 9019-2](#).
- (c) *Assigning Matters and Cases.* The court may assign to mediation any adversary proceeding or contested matter or any issue within such adversary proceeding or contested matter.
- (d) *Certification of Mediators.*
 - (1) The court may certify as many mediators as determined to be necessary under this rule.
 - (2) An individual may be certified to serve as a mediator if:
 - (A) he or she has been a member of the bar of the highest court of a state or the District of Columbia for a minimum of five (5) years;
 - (B) he or she is admitted to practice before this court;
 - (C) he or she has successfully completed a mediation training program established or recognized by the District Court or the Bankruptcy Court for the Middle District of Pennsylvania; and
 - (D) he or she has been determined by the appointing court to be competent to perform the duties of a mediator.

- (3) The court will solicit qualified individuals to serve as mediators.
 - (4) Each individual certified as a mediator must take the oath or affirmation prescribed by [28 U.S.C. § 453](#) before serving as a mediator.
 - (5) The clerk must maintain a list of all persons certified as mediators.
 - (6) The appointing judge may remove anyone from the list of certified mediators for cause.
 - (7) Persons acting as mediators under this rule are assisting the court in performing its judicial function. They must be disqualified for bias or prejudice as provided by [28 U.S.C. § 144](#) and must disqualify themselves in any action in which they would be required under [28 U.S.C. § 455](#) to disqualify themselves if they were a justice or judge.
- (e) *Compensation and Expenses of Mediators.* A mediator who accepts a case for mediation initially volunteers the time expended to prepare for and conduct a mediation conference or conferences lasting up to a total of four (4) hours. After completion of four (4) hours service, the mediator may either:
- (1) continue to volunteer the mediator's time; or
 - (2) give the mediation parties the option to agree to pay the mediator his prevailing hourly rate for bankruptcy services for the additional time spent on the mediation. The parties must each pay a *pro rata* share of the mediator's compensation, unless they agree among themselves to a different allocation. A motion to enforce a party's obligation to compensate a mediator is governed by [F.R.B.P. 9014](#).
- (f) *Frequency of Service.* An individual certified as a mediator will not be called upon more than twice in a twelve (12) month period to serve as a mediator without the prior approval of the mediator.
- (g) *Scheduling Mediation Conference.*
- (1) Upon referral of a case to mediation, the court will serve the order of referral to the mediator, all counsel, and any unrepresented party directing the mediator to establish the date, place, and time of the mediation session. The order will include the address, telephone number, email address, and facsimile number of the mediator, counsel, and unrepresented parties. The date of the mediation session must be a date within thirty (30) days from the date of the order of referral.

- (2) The appointment is effective unless the designee rejects the appointment within seven (7) days.
- (3) Upon docketing of the order of referral to mediation, the clerk must transmit to the mediator, either by email or regular mail, a copy of the docket sheet that reflects all filings to date. The mediator may identify to the clerk those filed documents which the mediator wishes to review for the mediation. Unless otherwise ordered by the court, the clerk will provide the mediator with electronic or paper copies of the requested documents free of charge.
- (4) A mediator may change the date and time for the mediation session if the session takes place within forty-five (45) days of the date of the order of referral. Any continuance of the session beyond forty-five (45) days must be approved by the court.

(h) *The Mediation Process.*

- (1) Not later than seven (7) days before the initial conference, each party must deliver or send a facsimile or email to the mediator a mediation conference memorandum no longer than two (2) pages, summarizing the nature of the case and the party's position on:
 - (A) the major factual and legal issues affecting liability and damages;
 - (B) the relief sought by each party; and
 - (C) the position of the parties relative to settlement.
- (2) The memoranda required by this subdivision are solely for use in the mediation process and are not to be filed with the clerk.

(i) *The Mediation Session.*

- (1) The mediation session must take place on the date and at the time set forth by the mediator. The mediation session must take place at a neutral setting as designated by the mediator that may include the mediator's office. A party must not contact or forward any document to the mediator unless the mediator requests the information or unless as otherwise provided under these rules.
- (2) Counsel primarily responsible for the case and any unrepresented party must attend the mediation session. All parties or principals of parties with decision-making authority must attend the mediation session in person, unless attendance is excused by the mediator for good cause shown. Willful failure

to attend the mediation conference must be reported to the court and may result in the imposition of sanctions. The participants must be prepared to discuss:

- (A) all liability issues;
 - (B) all damage issues;
 - (C) all equitable and declaratory remedies if such are requested; and
 - (D) the position of the parties relative to settlement.
- (3) Unless otherwise provided in this rule, and as may be necessary to the reporting of or the processing of complaints about unlawful or unethical conduct, nothing communicated during the mediation process - including any oral or written statement made by a party, attorney, or other participant, and any proposed settlement figure stated by the mediator or on behalf of any party - may be placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party may be bound by anything done or said during the mediation process except to enforce a settlement agreement or any other agreement achieved in that process.
- (4) In the event the mediator determines that no settlement is likely to result from the mediation session, the mediator must terminate the session and promptly send a report to the court that there has been compliance with the requirements of these paragraphs, but that no resolution has been reached. In the event that a settlement is achieved at the mediation session, the mediator must send a written report to the judge to whom the case is assigned stating that a settlement has been achieved. The parties are responsible for the circulation of any required notice of settlement.
- (5) Notwithstanding the above paragraph, the mediator must submit a written report to the court advising the court of the status of the mediation within sixty (60) days after the order of appointment of the mediator.
- (6) No one may have a recording or transcript made of the mediation session, including the mediator, unless otherwise agreed to by the parties.
- (7) The mediator cannot be called as a witness at trial.
- (j) *Neutral Evaluator.* Anytime after an action or proceeding has been filed, the action may be referred to a neutral evaluator to be selected with the approval of the parties.
- (k) *Relationship to Other Procedures.* Nothing in this rule modifies the provisions of [Fed.R.Civ.P. 16](#) and [26](#), or L.B.R. 7016-1 or any order of court, nor does it preclude

the use of any kind of mediation outside of the mediation process established by this rule or the use of any other means of alternative dispute resolution.

Rule 9019-3 *Mortgage Modification Mediation Program.*

- (a) *Program Description.* The Mortgage Modification Mediation Program (“MMM Program”) is available to any chapter 13 debtor seeking to modify a mortgage obligation with respect to his or her principal residence. In order to qualify for the MMM Program, debtor must meet the following criteria:
- (1) Debtor has regular, verifiable income and is the owner/occupant of a residential property used as debtor’s primary residence.
 - (2) Debtor has a mortgage balance of less than \$729,750.00, and the mortgage payment is unaffordable due to financial hardship.
 - (3) Debtor will make monthly post-petition mortgage payments of seventy-five percent (75%) of debtor’s current mortgage payment starting with the next monthly scheduled due date (plus any grace period, after the Motion to Participate is filed and granted). Debtor agrees that in the event debtor misses one of the modified mortgage payments, the lender and/or servicer for the mortgagee of record (“Mortgage Creditor”) may file a motion for relief from the automatic stay and seek removal of debtor from the MMM Program.
 - (4) Debtor has filed complete bankruptcy schedules and must supply Mortgage Creditor with the last two (2) years’ signed tax returns, last sixty (60) days’ payment advices, and any other document Mortgage Creditor requests. Failure to supply the documents within thirty (30) days of admission to the MMM Program is grounds for dismissal from the MMM Program.
 - (5) If a mediator is used, debtor must pay a mediation fee of \$125.00 to the mediator. Mortgage Creditor must also pay \$125.00 to the mediator. Neither fee is refundable under any circumstances. Mediation is to be completed within sixty (60) days, unless otherwise extended consistent with the paragraphs contained herein.
- (b) *Application to the MMM Program.*
- (1) *Motion.* To seek admission to the MMM Program, debtor must file a Motion to Participate in the Mortgage Modification Mediation Program (“Motion to Participate”), together with the Notice of Filing of Motion to Participate in Mortgage Modification Mediation Program, [L.B.F. 9019-3\(a\)](#), and serve copies of same on Mortgage Creditor and any counsel of record. In the Motion to Participate, debtor must state whether he wishes to utilize the DMM Portal, or

such other portal as may be designated by the court, (the “Portal”) or to communicate directly with Mortgage Creditor and its counsel. Additional information related to the Portal is posted on the court’s website at www.pamb.uscourts.gov and may be updated from time to time by the court.

- (2) *Response.* Mortgage Creditor will have twenty-one (21) days to file a response to the Motion to Participate.
 - (A) *Acceptance.* If Mortgage Creditor agrees to participation, Mortgage Creditor will file a Consent to Participation in Mortgage Modification Mediation Program (“Creditor Consent Form”), [L.B.F. 9019-3\(b\)](#) and the court will enter an Order Granting Entry in MMM Program. Prior to filing the Creditor Consent Form, the parties will confer as to whether they wish to utilize the Portal or to communicate directly with one another outside the Portal for the modification process. The Creditor Consent Form will reflect the decision of the parties. Should the Creditor Consent Form not contain a designation as to whether or not the Portal will be used, the preference stated by debtor in the Motion to Participate will govern. Should both the Motion to Participate and the Creditor Consent Form fail to include a designation as to the Portal, the parties will be deemed to have opted not to use the Portal.
 - (B) *Objection.* If Mortgage Creditor objects to participation, a written response stating the basis for the objection must be filed with the court. Upon filed written objection, the Motion to Participate will be denied without prejudice to re-filing.
 - (C) *Failure to Respond.* If Mortgage Creditor fails to file either the Creditor Consent Form or an objection to participation within twenty-one (21) days, Mortgage Creditor will be deemed to have waived any objection and the court may enter an Order Granting Entry in MMM Program (“Participation Order”) without further notice or hearing. The preference elected by debtor as to the Portal in the Motion to Participate will govern. Should the Motion to Participate fail to elect a preference, the parties will be deemed to have opted not to use the Portal.
 - (D) *Re-filing the Motion to Participate.* A Motion to Participate may be re-filed after an objection by Mortgage Creditor, only with written concurrence of Mortgage Creditor unless the motion includes information demonstrating a material change in debtor’s circumstances that either renders Mortgage Creditor’s prior objection moot or otherwise rebuts the objection. If Mortgage Creditor files an objection

to the refiled Motion to Participate, the court may set a hearing thereon or rule on the refiled Motion to Participate without a hearing.

(c) *Proceeding in the MMM Program Using Portal.*

- (1) Within fourteen (14) days of entry of a Participation Order, unless not previously registered, Mortgage Creditor must, register with the Portal and post on the Portal the required loss mitigation application to be completed by debtor.
- (2) Debtor must upload and submit a completed loss mitigation application on the Portal within thirty (30) days after Mortgage Creditor registers with the Portal. If Mortgage Creditor is registered with the Portal at the time the Participation Order is entered, debtor will be required to upload and submit a completed loss mitigation application on the Portal within thirty (30) days after such Participation Order is entered. Failure to do so may result in debtor being removed from the MMM Program upon written motion of Mortgage Creditor.
- (3) Within fourteen (14) days after debtor's submission of the loss mitigation application, Mortgage Creditor must designate, via the Portal, a specific individual who is the single point of contact for the loss mitigation process. The designated representative will be responsible for all communications in the Portal with debtor. Mortgage Creditor must provide the designated representative's name, title, email address, and either a direct telephone number or direct extension. At the same time, Mortgage Creditor must acknowledge, via the Portal, receipt of debtor's loss mitigation application and advise debtor of any additional or missing information required for Mortgage Creditor to proceed with its review.
- (4) Debtor must promptly submit any and all additional or missing information required for Mortgage Creditor to proceed with its review, but in no event may the documents be submitted more than twenty-one (21) days after the date they are requested by Mortgage Creditor. Mortgage Creditor must continue reviewing the loss mitigation application in good faith while awaiting submission of additional or missing information.
- (5) Once the parties have opted to utilize the Portal, all material communications between debtor and Mortgage Creditor must be conducted exclusively through the Portal.
- (6) In the event that the loan being reviewed under the MMM Program becomes subject to a transfer or the service rights are scheduled to be assigned to a new servicer, then no less than fourteen (14) days prior to the scheduled transfer/assignment, Mortgage Creditor must file a Proposed Order Substituting

MMM Servicer, L.B.F. 9019-3(c), and update the Portal to identify the successor creditor (“Substituted Creditor”). In addition to updating the Portal, Mortgage Creditor must forthwith provide Substituted Creditor with all loss mitigation notes, applications, and correspondence related to the pending loss mitigation review. Substituted Creditor is responsible for ensuring all such documents are received from Mortgage Creditor and must continue the loss mitigation review without requiring a new Motion to Participate or initial application from debtor. Within thirty (30) days of the service transfer, Substituted Creditor must designate a representative who is the single point of contact for the loss mitigation process on behalf of Substituted Creditor. The designated representative is responsible for all communications in the Portal with debtor. Substituted Creditor must provide the designated representative’s name, title, email address, and either a direct telephone number or direct extension. To the extent updated or additional documents are required by Substituted Creditor in order to complete the loss mitigation review, Substituted Creditor must request such information or documents contemporaneously with designating its single point of contact on the Portal.

(d) *Proceeding in the MMM Program Outside the Portal.*

- (1) Upon entry of a Participation Order, Mortgage Creditor must provide debtor with the required loss mitigation package and document checklist within fourteen (14) days. Documents that may be requested include, but are not limited to, IRS Form 4506-T, utility bills, bank statements, payment advices, and federal tax returns.
- (2) Within thirty (30) days of the entry of the Participation Order, debtor must provide the last two (2) years’ signed tax returns, last sixty (60) days’ payment advices, and any other document Mortgage Creditor requests. Failure to do so may result in debtor being removed from the MMM Program upon written motion of Mortgage Creditor.
- (3) Within fourteen (14) days after debtor’s submission of the loss mitigation application, Mortgage Creditor must designate, via written notice to debtor and debtor’s counsel, a specific individual who is the single point of contact for the loss mitigation process. The designated representative is responsible for all communications with debtor with respect to the loss mitigation review. Mortgage Creditor must provide the designated representative’s name, title, email address, and either a direct telephone number or direct extension. At the same time, Mortgage Creditor must acknowledge receipt of debtor’s loss mitigation application and advise debtor of any additional or missing information required for Mortgage Creditor to proceed with its review.

- (4) Debtor must promptly submit all additional or missing information required for Mortgage Creditor to proceed with its review, but in no event may the documents be submitted more than twenty-one (21) days after the date they are requested by Mortgage Creditor. Mortgage Creditor must continue reviewing the loss mitigation application in good faith while awaiting submission of additional or missing information.
 - (5) In the event that the loan being reviewed under the MMM Program becomes subject to a transfer or the service rights are scheduled to be assigned to a new servicer, then no less than fourteen (14) days prior to the scheduled transfer/assignment, Mortgage Creditor must file a Proposed Order Substituting MMM Servicer, L.B.F. 9019-3(c), identifying the successor creditor (“Substituted Creditor”). Mortgage Creditor must forthwith provide Substituted Creditor with all loss mitigation notes, applications, and correspondence related to the pending loss mitigation review. Substituted Creditor is responsible for ensuring all such documents are received from Mortgage Creditor and must continue the loss mitigation review without requiring a new Motion to Participate or initial application from debtor. Within thirty (30) days of the service transfer, Substituted Creditor must designate a representative who is the single point of contact for the loss mitigation process on behalf of Substituted Creditor and provide written notice thereof to debtor and debtor’s counsel of record. The designated representative is responsible for all loss mitigation communications with debtor. Substituted Creditor must provide the designated representative’s name, title, email address, and either a direct telephone number or direct extension. To the extent updated or additional documents are required by Substituted Creditor in order to complete the loss mitigation review, Substituted Creditor will request such information or documents contemporaneously with providing written notice of its single point of contact.
- (e) *Request for Status Conference and/or Appointment of Mediator.*
- (1) Upon the motion of either party, the court may schedule a status conference concerning the loss mitigation process. Such motion must include the grounds for requesting said conference along with a description of the efforts made to resolve any differences prior to requesting the status conference. The motion must be served upon the other party and his counsel. The court may, on its own initiative, schedule a status conference.
 - (2) At the time of the status conference, both parties must be prepared to provide the court with sufficient detail as to the status of the loss mitigation review so that the court can assess whether further two-party

negotiations are likely to be productive and/or whether the appointment of a mediator may be beneficial to the parties.

- (3) After the status conference, if the court determines that the appointment of a mediator may be beneficial, the court will issue an order of referral to the mediator, all counsel, and any unrepresented party, directing the mediator to establish the date, place, and time of the mediation session. The order will include the address, telephone number, email address, and facsimile number of the mediator, counsel, and unrepresented parties. The date of the mediation session will be a date within thirty (30) days from the date of the order of referral.
 - (4) The appointment is effective unless the mediator rejects the appointment within seven (7) days of the date of the order of referral.
 - (5) Upon docketing of the order of referral to mediation, the clerk must transmit to the mediator a copy of the docket sheet that reflects all filings to date. The mediator may specify those documents in the case that the mediator wishes to review for the mediation. Unless otherwise ordered by the court, the clerk will provide the mediator with electronic or paper copies of the requested documents.
 - (6) Mediation must be completed within thirty (30) days, but the mediator may extend the time to complete the mediation for a period up to forty-five (45) days from the date of the order of referral. Any continuance of the session beyond forty-five (45) days must be approved by the court.
 - (7) Debtor must pay a mediation fee of \$125.00 to the appointed mediator. Mortgage Creditor (or, if applicable, Substituted Creditor) must also pay \$125.00 to the appointed mediator. Neither fee is refundable under any circumstances.
- (f) *The Mediation Process.*
- (1) Not later than seven (7) days before the scheduled mediation session, debtor and Mortgage Creditor (or, if applicable, Substituted Creditor) must each deliver or send by facsimile or email to the mediator and the opposing party a mediation conference memorandum no longer than two (2) pages, summarizing the status of the loss mitigation process.
 - (2) The memoranda required by this subdivision are solely for use in the mediation process and are not to be filed with the clerk.
- (g) *The Mediation Session.*

- (1) The mediation session must take place on the date and at the time set by the mediator. The mediation session must take place at a neutral setting as designated by the mediator that may include the mediator's office. A party must not contact or forward any document to the mediator unless the mediator requests the information or unless as otherwise provided under these rules.
- (2) Debtor must appear in person at the mediation session with counsel, unless unrepresented. Counsel for Mortgage Creditor (or, if applicable, Substituted Creditor) who is primarily responsible for the case must appear in person. A representative of Mortgage Creditor (or, if applicable, Substituted Creditor) must be available by phone for the mediation session. The participants must be prepared to discuss:
 - (A) the status of the loss mitigation process; and
 - (B) the position of the parties relative to settlement.
- (3) Unless otherwise provided in this rule, and as may be necessary to the reporting or processing of complaints about unlawful or unethical conduct, nothing communicated during the mediation process - including any oral or written statement made by a party, attorney, or other participant, and any proposed settlement figure stated by the mediator or on behalf of any party - may be placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party may be bound by anything done or said during the mediation process except to enforce a settlement agreement or any other agreement achieved in that process.
- (4) In the event the mediator determines that no settlement is likely to result from the mediation session, the mediator must terminate the session and promptly send a report to the court that there has been compliance with the requirements of L.B.R. 9019-3(g), but that no resolution has been reached. In the event that a settlement is achieved at the mediation session, the mediator must send a written report to the court stating that a settlement has been reached.
- (5) Notwithstanding the above paragraph, the mediator must submit a written report to the court describing the status of the mediation no later than thirty (30) days after the completion of the mediation session.
- (6) No one may have a recording or transcript made of the mediation session, including the mediator, unless otherwise agreed to by the parties.

- (7) The mediator cannot be called as a witness at trial.
- (h) *Compensation and Expenses of Mediators.* A mediator who accepts a case for mediation initially will receive a total of \$250.00 from the parties for up three (3) hours' of actual mediation services for time expended to prepare and conduct a mediation conference or conferences. After completion of three (3) hours' service, the mediator may either
 - (1) continue to volunteer the mediator's time; or
 - (2) give the mediation parties the option to agree to pay the mediator his prevailing hourly rate for bankruptcy services for the additional time spent on the mediation. The parties must each pay a pro rata share of the mediator's compensation, unless they agree among themselves to a different allocation. A motion to enforce a party's obligation to compensate a mediator is governed by [F.R.B.P. 9014](#).
- (i) *Frequency of Service.* An individual certified as a mediator will not be called upon more than four (4) times in a twelve (12) month period to serve as a mediator under the MMM Program without the prior approval of the mediator.
- (j) *MMM Program Results.*
 - (1) If the MMM Program is successful, Mortgage Creditor (or, if applicable, Substituted Creditor) will file a motion to approve final modification with a copy of the modification agreement.
 - (2) When debtor's primary residence remains property of the estate, notice of the filing of the motion to approve final modification must be provided to creditors and parties in interest. Such notice must be provided by Mortgage Creditor (or, if applicable, Substituted Creditor). A passive notice, pursuant to L.B.R. 2002-1(a), is required allowing a twenty-one (21) day objection period. A certificate of mailing evidencing compliance with this notice provision must be filed within seven (7) days following the date of the notice.
 - (3) If the MMM Program is unsuccessful and no loan modification is agreed to by the parties, debtor must file an amended/modified chapter 13 plan within twenty-one (21) days to address the pre-petition mortgage arrears and any post-petition arrears that may have accrued as a result of the reduced monthly payments. If an amended/modified chapter 13 plan is not timely filed, Mortgage Creditor (or, if applicable, Substituted Creditor) may file a motion for relief from the automatic stay.

(4) If within one hundred and twenty (120) days from the entry of the Participation Order, neither a motion to approve loan modification nor an amended/modified chapter 13 plan to address Mortgage Creditor's lien has been filed, debtor must file and serve a Loss Mitigation Status Report with an attached printout of the current and complete account history from the Portal. If the parties opted not to use the Portal, the Loss Mitigation Status Report must include a history of the loss mitigation review process along with the outcome of same. Such Status Report is to be filed on the bankruptcy docket and, if applicable, in the Portal. The obligation to timely file a Loss Mitigation Status Report applies in all cases in the MMM Program unless the bankruptcy case has been dismissed or converted prior to the time for filing the Status Report, in which case no report is required. Upon the motion of any party, or on its own initiative, the court may set a hearing on the Status Report.

(k) *Relationship to Other Procedures.* Nothing in this rule modifies the provisions of [F.R.C.P. 16](#) and [26](#), or L.B.R. 7016-1 or any order of court, nor does it preclude the use of any kind of mediation outside of the mediation process established by this rule or the use of any other means of alternative dispute resolution.

COMMENTS: *L.B.R. 9019-3 was amended effective June 1, 2016, in part, to provide for optional use of a Portal to upload and exchange documents which will facilitate the mortgage modification process.*

~~(a) *Program Description.* The Mortgage Modification Mediation Program (“MMM Program”) is available to any chapter 13 debtor seeking to modify a mortgage obligation with respect to his or her principal residence. In order to qualify for the MMM Program, the debtor must meet the following criteria:~~

~~(1) Debtor has regular, verifiable income and is the owner/occupant of a residential property used as debtor's primary residence.~~

~~(2) Debtor has a mortgage balance of less than \$729,750.00, and the mortgage payment is unaffordable due to financial hardship.~~

~~(3) Debtor will make monthly post-petition mortgage payments of seventy-five percent (75%) of the debtor's current mortgage payment starting with the next monthly scheduled due date (plus any grace period, after the Motion to Participate is filed and granted). Debtor agrees that in the event debtor misses one of the modified mortgage payments, the lender and/or servicer for the mortgagee of record (“mortgage creditor”) may file a motion for relief from the automatic stay and seek removal of the debtor from the MMM Program.~~

- ~~(4) Debtor has filed complete bankruptcy schedules and must supply mortgage creditor with the last two (2) years' signed tax returns, last sixty (60) days' payment advices, and any other document mortgage creditor requests. No mediation will be scheduled until all documents are provided. Failure to supply the documents within sixty (60) days of admission to the MMM Program is grounds for dismissal from the MMM Program.~~
- ~~(5) Debtor must pay a mediation fee of \$125.00 to the mediator. Mortgage creditor must also pay \$125.00 to the mediator. Neither fee is refundable under any circumstances and is unrecoverable. Mediation is to be completed within sixty (60) days, unless otherwise extended consistent with the paragraphs contained herein.~~
- ~~(b) Application to the MMM Program:~~
- ~~(1) Motion. To seek admission to the MMM Program, a debtor must file a Notice of Motion and Motion to Participate in the Mortgage Modification Mediation Program ("Motion to Participate"), L.B.F. 9019-3(a), and serve a copy of same on the mortgage creditor and any counsel of record.~~
- ~~(2) Response. Mortgage creditor will have twenty-one (21) days to file a response to the Motion to Participate. A response is required.~~
- ~~(A) Acceptance. If the mortgage creditor agrees to participation, mortgage creditor will file a Consent to Motion to Participate in Mortgage Modification Mediation Program ("Creditor Consent Form"), L.B.F. 9019-3(b).~~
- ~~(B) Objection. If the mortgage creditor objects to participation, a written response stating the basis for the objection must be filed with the court. Upon written objection, the Motion to Participate will be denied without prejudice to re-filing.~~
- ~~(C) Failure to Respond. If the mortgage creditor fails to file the Creditor Consent Form or an objection to participation within twenty-one (21) days, the Motion to Participate will be dismissed without prejudice to re-filing the mortgage creditor will be deemed to have waived any objection and the court may enter an order granting the Motion to Participate.~~
- ~~(D) Re-Filing the Motion to Participate. A Motion to Participate may only be re-filed after an objection by the mortgage creditor, if filed with written concurrence of the mortgage creditor.~~

~~(c) *Proceeding in the MMM Program.*~~

- ~~(1) After the filing of the Creditor Consent Form, an order admitting the debtor into the MMM Program will be entered by the court. Upon entry of an order admitting the debtor into the MMM Program, L.B.F. 9019-3(c), the mortgage creditor must provide the debtor with the required loss mitigation package and document checklist within twenty-one (21) days. Documents that may be requested include, but are not limited to, IRS Form 4506-T, utility bills, bank statements, payment advices, and federal tax returns.~~
- ~~(2) Within sixty (60) days of the order admitting the debtor into the MMM Program, the debtor must provide the last two (2) years' signed tax returns, last sixty (60) days' payment advices, and any other document mortgage creditor requests. Failure to do so may result in the debtor being removed from the MMM Program upon written request of the mortgage creditor. Debtor must file L.B.F. 9019-3(d), Debtor's Certification of Readiness for Mediation, ("Debtor's Certification") as soon as the above documentation has been provided to the mortgage creditor.~~
- ~~(3) Upon filing of the Debtor's Certification, the court will issue an order of referral to the mediator, all counsel, and any unrepresented party directing the mediator to establish the date, place, and time of the mediation session. The order will include the address, telephone number, email address, and facsimile number of the mediator, counsel, and unrepresented parties. The date of the mediation session will be a date within sixty (60) days from the date of the order of referral.~~
- ~~(4) The appointment is effective unless the mediator rejects the appointment within seven (7) days of the date of the order of referral.~~
- ~~(5) Upon docketing of the order of referral to mediation, the clerk must transmit to the mediator a copy of the docket sheet that reflects all filings to date. The mediator may identify to the clerk those filed documents which the mediator wishes to review for the mediation. Unless otherwise ordered by the court, the clerk will provide the mediator with electronic or paper copies of the requested documents.~~
- ~~(6) A mediator may change the date and time for the mediation session if the session takes place within seventy-five (75) days of the date of the order of referral. Any continuance of the session beyond seventy-five (75) days must be approved by the court.~~

~~(d) *The Mediation Process.*~~

~~(1) Not later than seven (7) days before the conference, the mortgage creditor must deliver or send by facsimile or email to the mediator and debtor and/or debtor's counsel, a mediation conference memorandum no longer than two (2) pages, summarizing the status of the loss mitigation process.~~

~~(2) Not later than seven (7) days before the conference, the debtor may deliver or send by facsimile or e-mail to the mediator and the mortgage creditor, a mediation conference memorandum no longer than two (2) pages, summarizing his or her position with respect to the loss mitigation process.~~

~~(3) The memoranda required by this subdivision are solely for use in the mediation process and are not to be filed with the clerk.~~

~~(e) *The Mediation Session.*~~

~~(1) The mediation session must take place on the date and at the time set forth by the mediator. The mediation session must take place at a neutral setting as designated by the mediator that may include the mediator's office. A party must not contact or forward any document to the mediator unless the mediator requests the information or unless as otherwise provided under these rules.~~

~~(2) Counsel primarily responsible for the case and any unrepresented party must attend the mediation session. Debtor will appear in person at the mediation session. Counsel for the mortgage creditor will appear in person and a representative of the mortgage creditor will be available by phone for the mediation session. The participants must be prepared to discuss:~~

~~(A) the status of the loss mitigation process; and~~

~~(B) the position of the parties relative to settlement.~~

~~(3) Unless otherwise provided in this rule, and as may be necessary to the reporting or processing of complaints about unlawful or unethical conduct, nothing communicated during the mediation process - including any oral or written statement made by a party, attorney, or other participant, and any proposed settlement figure stated by the mediator or on behalf of any party - may be placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party may be bound by anything done or said during the mediation process except to enforce a settlement agreement or any other agreement achieved in that process.~~

~~(4) In the event the mediator determines that no settlement is likely to result from the mediation session, the mediator must terminate the session and promptly send a report to the court that there has been compliance with the requirements~~

of L.B.R. 9019-3(e), but that no resolution has been reached. In the event that a settlement is achieved at the mediation session, the mediator must send a written report to the judge to whom the case is assigned stating that a settlement has been achieved.

~~(5) Notwithstanding the above paragraph, the mediator must submit a written report to the court advising the court of the status of the mediation no more than thirty (30) days after the completion of the mediation session.~~

~~(6) No one may have a recording or transcript made of the mediation session, including the mediator, unless otherwise agreed to by the parties.~~

~~(7) The mediator cannot be called as a witness at trial.~~

~~(f) *Compensation and Expenses of Mediators.* A mediator who accepts a case for mediation initially will receive a total of \$250.00 from the parties for up three (3) hours of actual mediation services for time expended to prepare and conduct a mediation conference or conferences. After completion of three (3) hours of service, the mediator may either:~~

~~(1) continue to volunteer the mediator's time; or~~

~~(2) give the mediation parties the option to agree to pay the mediator his prevailing hourly rate for bankruptcy services for the additional time spent on the mediation. The parties must each pay a *pro rata* share of the mediator's compensation, unless they agree among themselves to a different allocation. A motion to enforce a party's obligation to compensate a mediator is governed by F.R.B.P. 9014.~~

~~(g) *Frequency of Service.* An individual certified as a mediator will not be called upon more than four (4) times in a twelve (12) month period to serve as a mediator under this MMM Program without the prior approval of the mediator.~~

~~(h) *MMM Program Results.*~~

~~(1) If the MMM Program is successful, the mortgage creditor will file a motion to approve final modification which includes a copy of the modification agreement.~~

~~(2) In the event there is either no confirmed plan or, the confirmed plan does not provide for the vesting of property in the debtor upon confirmation, the debtor's primary residence remains property of the estate. When a debtor's primary residence remains property of the estate, notice of the filing of the motion to approve final modification must be provided to creditors and parties in interest.~~

~~Such notice must be provided by either the mortgage creditor or the debtor. A passive notice, pursuant to L.B.R. 2002-1(a), is required allowing a twenty-one (21) day objection period. A certificate of mailing evidencing compliance with this notice provision must be filed within seven (7) days following the date of the notice.~~

~~(3) If the MMM Program is unsuccessful, the debtor will file an amended chapter 13 plan within twenty-one (21) days to address the pre-petition mortgage arrears and any post-petition arrears that may have accrued as a result of the reduced monthly payments. If an amended chapter 13 plan is not filed, the mortgage creditor may file a motion for relief from the automatic stay.~~

~~(i) *Relationship to Other Procedures.* Nothing in this rule modifies the provisions of Fed.R.Civ.P. 16 and 26, or L.B.R. 7016-1 or any order of court, nor does it preclude the use of any kind of mediation outside of the mediation process established by this rule or the use of any other means of alternative dispute resolution.~~

Rule 9023-1 *Motions for Reconsideration.* A motion for reconsideration must be filed within fourteen (14) days after the entry of the judgment, order, or decree concerned.

Rule 9023-2 *Post-Trial Motions.*

- (a) *Post-Trial Motions to be Written.* All motions after trial must be written and must contain a certification by counsel for the movant that he or she has sought concurrence in the motion from each party and that it has been either given or denied. In accordance with the procedures set forth in the [Miscellaneous Order 5:05-mp-50007](#) and the [Administrative Procedures](#) available on the court's website (www.pamb.uscourts.gov), every motion must be accompanied by a proposed order. (See L.B.R. 9013-1(b)).
- (b) *Documents Supporting Post-Trial Motions.* When allegations of fact not of record are relied upon in support of a motion, all pertinent affidavits, transcripts of depositions, and other documents must accompany the motion whenever practicable. In any event, such supporting documents must be filed within fourteen (14) days after the motion has been filed, unless otherwise ordered by the court. Affidavits in support of a motion for new trial must be served with the motion as required by [Fed.R.Civ.P. 59\(c\)](#).
- (c) *Grounds.* Post-trial motions must state with particularity any trial errors alleged as grounds for relief.
- (d) *Post-Trial Brief of Moving Party.* The brief of the moving party must be filed within fourteen (14) days after the filing of the motion, unless, upon motion and for good cause shown, the court directs otherwise. If a supporting legal brief is not filed within the time provided, the motion may be deemed to be withdrawn.

- (e) *Post-Trial Brief of Respondent.* The brief of the respondent must be filed within fourteen (14) days after service of the brief of the moving party, unless, upon motion and for good cause shown, the court directs otherwise. If a responsive legal brief is not filed within the time provided herein, the respondent may be deemed not to oppose such motion.
- (f) *After-Discovered Evidence.* A motion for a new trial on the ground of after-discovered evidence must, in addition to all other requirements, be accompanied by the affidavits of the witnesses relied upon, stating the substance of their testimony and the reasons why it could not have been introduced at trial.
- (g) *Disposal of Post-Trial Motions.* Notwithstanding the deadlines set forth in this rule, the court may summarily dispose of post-trial motions at any time during their pendency.

Rule 9024-1 *Relief from Judgment or Order.* A motion filed under [F.R.B.P. 9024](#) is governed by the provisions of L.B.R. 9023-1.

Rule 9029-1 *Attorney Advisory Committee.* The court will appoint a committee of attorneys who regularly practice in the Bankruptcy Court for the Middle District of Pennsylvania to advise the court on issues identified by the court and by the members of the bar.

- (a) *Membership.* The committee consists of the three (3) judges of the court, the Assistant United States trustee for the District, or his or her designee, the chapter 13 trustee, or his or her designee, the President of the Middle District Bankruptcy Bar Association, or his or her designee, **the Chair of the Middle District Bankruptcy Bar Association Rules Committee**, and eight (8) attorneys who are engaged in bankruptcy practice in the District and who represent the diverse interests of the District. The bankruptcy attorney members of the committee will be appointed by the Chief Judge after consultation with the other judges of the court and the President of the Middle District Bankruptcy Bar Association. The names of the committee members will be posted on the court's website (www.pamb.uscourts.gov). The clerk, or his or her designee, will serve as the secretary of the committee, and may invite staff to attend the meetings in order to facilitate the discussion of agenda items.
- (b) *Term of Office.* Each bankruptcy attorney member of the committee will serve a three (3) year term, beginning January 1 of each year. In the event of a vacancy on the committee, the Chief Judge will select a bankruptcy attorney to fill the vacancy for the remainder of the term.
- (c) *Meetings.* The committee will meet quarterly or as otherwise determined by the Chief Judge. All minutes of the committee meetings will be posted on the court's website (www.pamb.uscourts.gov).

- (d) *Duties.* The committee will advise the court on matters of court administration and serve as a liaison between the bankruptcy bar and the court on administrative matters. The committee, or designated subcommittees thereof, will make any studies and render any reports and recommendations requested by the court. The committee, or designated subcommittees thereof, will recommend amendments to the Local Bankruptcy Rules and Forms.

Rule 9037-1 *Redaction of Personal Identifiers in Filings Made with the Court.*

- (a) *Personal Identifiers.* As used in this rule, the term “Personal Identifiers” includes:
- (1) A social security number, taxpayer-identification number, or financial-account number showing more than the last four (4) digits;
 - (2) An individual’s birth date showing more than the year; and
 - (3) The name of an individual, other than the debtor, known to be and identified as a minor.
- (b) *Redacted Documents.* Any attorney, party, or other person filing documents with the court shall ensure that Personal Identifiers are redacted in accordance with [F.R.B.P. 9037](#).
- (c) *Responsibility for Redaction.* The clerk is not responsible for reviewing documents filed to ensure compliance with [F.R.B.P. 9037](#). Unless the court orders otherwise, the clerk is not required to redact any pleadings or documents filed in violation of [F.R.B.P. 9037](#).
- (d) *Request to Redact.* Any party in interest or person whose Personal Identifiers are contained in a document filed with the court may file a request to redact. A redaction request may be made using the court’s Application Requesting Redaction of Personal Information form (L.B.F. 9037-1). The request must include the applicable redaction fee, unless the court has granted a waiver of the fee. A person making a redaction request must serve the request on the debtor, any individual whose Personal Identifiers have been exposed, the case trustee (if any), and the United States trustee. A certificate of service conforming to L.B.R. 9013-2 demonstrating service on the above-referenced parties must be filed within five (5) days of filing the request. If the request is approved, the clerk will promptly restrict the original documents from public view and make a notation on the docket that the original has been restricted from public view. Unless the court orders otherwise, the requesting party must then file the redacted document within ~~ten (10)~~ **fourteen (14)** days of the court’s approval.

Rule 9070-1 *Exhibits.*

- (a) *Paper Exhibits.* Whenever the number of exhibits in any case to be presented at hearing or trial by either party exceeds fifteen (15), the party intending to offer such exhibits must tab, number, and index them in a binder. A complete copy of the exhibits must be provided to all parties at least seven (7) days prior to the trial or hearing, and to the court at the time of trial or hearing, unless otherwise ordered by the court. This requirement applies only to exhibits used in a party's case in chief and not to exhibits used for purposes of impeachment or rebuttal. Failure to timely exchange proposed exhibits in accordance with this rule may result in the court barring the admissions of any unexchanged exhibits.
- (b) *Electronic Exhibits.* A party who wishes to electronically display exhibits must contact the assigned judge's courtroom deputy at least seven (7) days before the trial or hearing to coordinate with the court's automation department to allow for such electronic display. Any party using electronically displayed exhibits must, at the time of trial or hearing, provide the court with three (3) copies of the exhibits on digital storage devices, such as USB flash drives.

Rule 9070-2 *Exhibits After Final Judgment.* Fourteen (14) days after entry of final, non-appealable judgment, each party is responsible for retrieving any exhibits, models, diagrams, or other physical evidence introduced at trial or hearing. If exhibits are not retrieved within the required time period, the clerk may dispose of the items without notice.

Rule 9071-1 *Stipulations.* Any proposed order requesting approval of a stipulation must be submitted as a separate document.

Rule 9073-1 *Hearings.*

- (a) *Testimony of Witnesses.* Unless otherwise directed, all hearings and trials are evidentiary in nature at which witnesses may testify.
- (b) *Contested Matters - Procedure.*
 - (1) *Hearing.* Upon the filing of a motion, the clerk will set a date by which an answer or other responsive pleading must be filed. If a responsive pleading is not filed by the answer date, the court may grant the relief requested subject to the limitations of [F.R.B.P. 9006\(f\)](#). Except as otherwise provided in these rules, no hearing date on the motion will be set.
 - (2) *Motions.* Notwithstanding the language of paragraph (1), hearings are required and will be set on the following motions:
 - (a) for relief under [11 U.S.C. § 362\(k\)](#);
 - (b) for sanctions under [F.R.B.P. 9011](#);

- (c) for contempt;
 - (d) to substantively consolidate under L.B.R. 1015-1(b);
 - (e) to dismiss the case with prejudice, including all motions filed pursuant to [11 U.S.C. § 109](#); and
 - (f) to disqualify counsel.
- (3) *Approval of Sales of Property Free and Clear of Liens.* While not required in the absence of a responsive pleading, at the request of the movant, a hearing will be held regarding a motion for approval of sales of property free and clear of liens under L.B.R. 6004-5(c).

Rule 9074-1 *Telephone or Video Appearance.*

- (a) *General Telephone Procedure.* An attorney or pro se party who wishes to participate in a matter telephonically must consult “Telephonic Court Appearance Information (CourtCall)” located on the court’s website (www.pamb.uscourts.gov).
- (b) *Request for Appearance by Video.* A request to appear by video must allege cause and be submitted in writing at least seven (7) days before the scheduled conference or hearing. Requests must include a certificate of concurrence or nonconcurrence from the other parties concerning the request. If the request is granted, the requestor must provide the court with the location and video conference numbers at the remote site. It is the responsibility of the requestor to arrange with the clerk’s office for a test of the system prior to the date of the hearing or conference to ensure compatibility of the conferencing systems.

Rule 9075-1 *Emergency Orders.*

- (a) *General Procedure.* In any case where a party files a pleading that requires an immediate hearing date or is seeking emergency relief from the court (i.e., temporary restraining orders or preliminary injunctions), the proponent must proceed as follows:
 - (1) Any motion filed under this rule must state in the caption that it is an “Emergency Motion” or “Request for Expedited Consideration”. Prior to filing the motion, movant must provide email notification of the intention to file the motion to the appropriate judge’s chambers.
 - (2) All interested parties must be notified of the request by facsimile, email, or other electronic means prior to the filing of the request for expedited consideration.

- (3) The emergency motion must specify the reasons why expedited consideration is necessary and attach a copy of the underlying pleading as an exhibit.
 - (4) A proposed order granting the motion for expedited relief and proposing a method of prompt service of the order and the underlying substantive motion must be filed with the emergency motion.
- (b) *Emergency Sale.* A seller, without any notice or with such notice as the court directs, may conduct an emergency sale. Such sale may be conducted only upon leave of court obtained after filing a motion specifying the following:
- (1) the property to be sold;
 - (2) the terms of the sale; and
 - (3) the reasons why the sale must be conducted without notice.

COMMENTS: *L.B.R. 9075-1 was amended effective September 1, 2014, to provide for advanced notice of emergency filings by email to chambers.*

L.B.R. 9075-1 was amended effective December 1, 2009, to modify the captioning requirements for requests for expedited relief or consideration and to delete provisions for facsimile transmission to the court.

APPENDIX 2016-1

PROJECT CATEGORIES

ASSET ANALYSIS AND RECOVERY: Identification and review of potential assets including causes of action and non-litigation recoveries.

ASSET DISPOSITION: Sales, leases (§365 matters), abandonment, and related transaction work.

BUSINESS OPERATIONS: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues, and other similar problems.

CASE ADMINISTRATION: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States trustee interim statements and operating reports; contacts with the United States trustee; general creditor inquiries.

CLAIMS ADMINISTRATION AND OBJECTIONS: Specific claim inquiries; bar date motions; analyses, objections, and allowances of claims.

EMPLOYEE BENEFITS/PENSIONS: Review issues such as severance, retention, 401K coverage, and continuance of pension plan.

FEE/EMPLOYMENT APPLICATIONS: Preparations of employment and fee applications for self or others; motions to establish interim procedures.

FEE/EMPLOYMENT OBJECTIONS: Review of and objections to the employment and fee applications of others.

FINANCING: Matters under [11 U.S.C. §§ 361](#), [363](#) and [364](#) including cash collateral and secured claims; loan document analysis.

LITIGATION: There should be a separate category established for each matter (i.e., XYZ Litigation).

MEETINGS OF CREDITORS: Preparing for and attending the conference of creditors, the [11 U.S.C. § 341\(a\)](#) meeting, and other creditors' committee meetings.

PLAN AND DISCLOSURE STATEMENT: Formulation, presentation, and confirmation; compliance with the plan confirmation order, related orders, and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

RELIEF FROM STAY PROCEEDINGS: Matters relating to termination or continuation of automatic stay under [11 U.S.C. § 362](#).

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

ACCOUNTING/AUDITING: Activities related to maintaining and auditing books of account, preparation of financial statements, and account analysis.

BUSINESS ANALYSIS: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

CORPORATE FINANCE: Review financial aspects of potential mergers, acquisitions, and disposition of company or subsidiaries.

DATA ANALYSIS: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

LITIGATION CONSULTING: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

RECONSTRUCTION ACCOUNTING: Reconstructing books and records from past transactions and bringing accounting current.

TAX ISSUES: Analysis of tax issues and preparation of state and federal tax returns.

VALUATION: Appraise or review appraisals of assets.