

## GENERAL PROVISIONS

### 9029-1      Local Rules - General (new number)

1.01	<u>Effective Date</u> (old number)
1.02	<u>Scope and Construction of Rules</u> (old number)

By Order entered on the 27th day of December, 1990, these rules were adopted by the Judges of this District and became effective February 1, 1991. This revision, dated July 1, 1994, incorporates revisions dated January 16, 1992, and August 15, 1993.

These rules govern the practice and procedure in the United States Bankruptcy Court for the Southern District of West Virginia ("the Court"). The rules shall govern all proceedings in Bankruptcy Court for all cases filed after the effective date and in all further proceedings in cases pending as of the effective date, unless otherwise ordered by the Court. The judges of the District Court may amend and supplement the rules from time to time.

These rules are intended to supplement and complement the Federal Bankruptcy Rules. They shall be applied, construed and enforced so as to avoid inconsistency with the United States "Bankruptcy Rules and Official Forms", effective August 11, 1983, as amended.

The "Rules of Practice and Procedure" of the United States District Court for the Southern District of West Virginia are intended to supplement and complement these rules, where applicable. Appendix I to these rules sets forth with particularity those District Court Local Rules which are relevant and which shall be applied to the practice of bankruptcy before this Court.

In their application and administration, the rules shall be construed and employed so as to provide fairness and simplicity in procedure, to avoid technical and unjustifiable delay, to secure just, expeditious and inexpensive determination of all matters pending before the Court, and to otherwise promote the efficient administration of justice.

#### Cross Reference

See "Rules of Practice and Procedure",  
U.S. District Court, S.D.W.V.  
Appendix I

9029-2            Local Rules - General Orders (new number)

1.03                    Rescission of Prior General Orders (old number)

Subsequent to the adoption of the Local Rules, effective August 1, 1985, and prior to the effective date of these rules, various General Orders were entered by the Court. These General Orders, except those regarding internal office practice and duties or bond matters concerning the panel of trustees, have been incorporated in these rules. Therefore, General Orders 86-2, 87-02, 87-04, 88-05, 88-06, 89-01 and 89-02 are rescinded. Further General Orders 92-01, 92-03 and 93-02 are rescinded.

**COURT ADMINISTRATION**

5001-2            Clerk - Office Location/Hours (new number)

2.01                    Sessions of Court (old number)

The Court shall be deemed to be open and in continuous session in accordance with the provisions of Rule 5001 of the Bankruptcy Rules.

Cross Reference  
Bankruptcy Rule 5001  
See also, Rule 77, F.R.Civ.Proc.

1072-1            Places of Holding Court (new number)

2.02                    Division of Business; Change of Venue (old number)

The United States Bankruptcy Court for the Southern District of West Virginia is the proper venue for cases in which the debtor's residence or place of business is in one of the twenty-three (23) counties listed in Rule 2.03.

The Southern District of West Virginia includes five (5) divisional offices located in Bluefield (division 1), Charleston (division 2), Huntington (division 3), Parkersburg (division 4), and Beckley (division 5).

The Court will, in the interests of the parties, conduct hearings and other proceedings at each of the divisional locations, except where the Court determines hearings should be held elsewhere for the convenience of the Court or the parties in interest.

1014-2            Venue - Change of (new number)

Divisional venue of a bankruptcy case within the Southern District ordinarily will be in the division of the district where the debtor maintains his/her residence or place of business. A change of venue within the district may be granted upon motion to the Court, upon a showing of good cause. The Clerk will mail the order granting the change of venue to all parties listed on the debtor's mailing matrix.

Cross reference

Local Rule 2.03

U.S. District Court, S.D.W.V. Local Rule 1.02(b)

1071-1            Divisions - Bankruptcy Court (new number)

2.03                Divisions(old number)

For the purposes of determining divisional venue, the Bankruptcy Court will observe the divisions established by the "Rules of Practice and Procedure" of the United States District Court for the Southern District of West Virginia. A list of the divisions and counties currently contained therein is located in Appendix J of these rules. If the District Court alters these divisions, this Court will revise Appendix J to reflect the change.

Cross reference

U.S. District Court, S.D.W.V. Local Rule 1.02(b)

Appendix J (Divisions)

5001-2            Clerk - Office Location/Hours (new number)

2.04                Place of Filing (old number)

All petitions, pleadings, other papers, and fees, if applicable, shall be filed by mail or in person with the Clerk of the Bankruptcy Court in Charleston only, at the following address:

United States Bankruptcy Court  
Southern District of West Virginia  
300 Virginia Street E., Room 2400  
Charleston, WV 25339

5081-1            Fees - Form of Payment (new number)

2.05                    Payment of Fees (old number)

Checks will be accepted by the Clerk from counsel of record, Chapter 11 debtors, and Chapter 13 debtors subject to collection. Fees paid by Chapter 7 debtors will be accepted only if payment is made by cash, cashier's check or money order.

2090-1            Attorneys - Admission to Practice (new number)

2.06                    Admission to Practice Before Bankruptcy Court (old number)

Attorneys admitted to practice in the United States District Court for the Southern District of West Virginia are automatically admitted to practice before this Court.

Any visiting attorney, not admitted to practice before the U. S. District Court, S.D.W.V., who is a member in good standing of the bar of the Supreme Court of the United States, or of the bar of the highest court of any state in the United States, or of the bar of the District of Columbia, may file a motion pro hac vice with the Bankruptcy Court. Such motion shall contain a statement identifying by exact name and address the bar of which the visiting attorney is a member in good standing and will ordinarily be granted in matters of disputed claims litigation and enforcement of Bankruptcy Court judgments, but, otherwise, it shall be granted only on a case-by-case basis for cause. If no order is entered admitting an attorney pro hac vice, a visiting attorney must associate with local counsel admitted to practice before the Court, who shall endorse all pleadings filed with the Court and accompany the visiting attorney upon the visiting attorney's initial appearance before the Court. Thereafter, the local counsel may, by and with the consent of the Court, be excused from further attendance during the proceedings, and the visiting attorney may be permitted to continue to appear for the purpose of the particular case. If a pleading is filed by a visiting attorney who has not been admitted pro hac vice and which is not endorsed by local counsel, the Court shall mail a notice to the visiting attorney that unless there is compliance with this rule within fifteen (15) days, the Court may strike the pleading from the docket.

1073-1            Assignment of Cases (new number)

2.07                    Assignment of Case and/or Adversary Proceeding (old number)

The Judicial Conference of the United States at its March 16-17, 1983, meeting authorized concurrent State-wide jurisdiction for the bankruptcy judges of the Northern and Southern Districts of West Virginia.

Pursuant to 28 U.S.C. § 154(a), by agreement between the bankruptcy judges of the Northern and Southern Districts of West Virginia, each judge may assign cases filed within his own district to the judge of the other district as the press of business, workload or the interest of justice dictates.

Unless otherwise ordered by the Court, pleadings will be filed and the case file maintained in the district where the case originated.

Cross reference  
Bankruptcy Rule 1014 (Change of Venue)

7004 - 1      Service of Process (new number)

2.08              Service on Counsel for Debtor(s) Required (old number)

Whenever these rules or the Bankruptcy Rules require service on the debtor(s), service on counsel for the debtor(s) is also required.

4002-1      Debtor - Duties (new number)

2.09              Duties of Pro Se Debtor (old number)

A debtor appearing pro se in a bankruptcy case has the same duty to comply with these rules as does an attorney employed to represent a debtor.

4002-2      Address of Debtor (new number)

2.10              Notice of Change of Debtor's Address (old number)

If the debtor's address listed on the petition should change during the pendency of the case, the debtor's counsel shall immediately notify the Court of the new address.

9072-1      Orders - Proposed (new number)

2.11              Proposed Orders and Stipulations (old number)

Counsel who presents a motion for order shall submit a proposed order for entry by the Court. The Clerk may, in his discretion, refuse to accept any motion not accompanied by a proposed order. All proposed orders and any orders drafted at the direction of the Court shall bear a caption

which adequately summarizes the substance of the order. The order should not be on paper which bears the engraved or printed name of the firm submitting the order. All orders shall contain the signature of the party submitting the order for entry by the Court. The order should not contain language directing the Clerk to send certified copies to all parties in interest. Certified copies will be sent upon individual request and the payment of a fee as prescribed by 28 U.S.C. § 1930 (See Appendix A for current fee).

9071-1      Stipulations (new number)

The Court will accept Stipulations entered into by the parties in interest in those matters where the parties have reached a voluntary agreement between themselves, the terms of which do not require approval by the Court. Such matters would include, for example, a stipulation extending the time to answer a complaint, providing for the taking of a deposition, or modifying procedures pertaining to discovery.

2.12                      Summary of Orders (old number)

Orders approving a compromise, settling a controversy, or setting forth terms of a sale tend to be voluminous in nature. Because these lengthy orders must be served on the creditor body, the Clerk may direct counsel to prepare a concise summary of the terms of the compromise, ordinarily no longer than one page, to be mailed to parties in interest.

5005-1      Filing Papers - Requirements (new number)

2.13                      Rejection of Pleadings (old number)

(a)      The Clerk of the Bankruptcy Court shall present to the Bankruptcy Judge any petitions, lists, schedules, pleadings, claims or other papers that contain the following deficiencies:

1.      Petitions:
  - A.      Where not accompanied by the proper filing fee or an application to pay in installments.
  - B.      Where not accompanied by a properly completed mailing matrix.
  - C.      Where not verified by signature of the attorney or not containing an unsworn declaration with signature of all debtors.

- D. Where two or more individuals are listed, or two or more entities listed, except where 11 U.S.C. § 302 permits the filing of a joint petition.
  - E. Where it is a Chapter 11 case and the petition is not accompanied by the list of twenty (20) largest creditors.
  - F. Where filed by a corporation, except in a Chapter 7 case, and the debtor-corporation is not represented by an attorney.
2. Adversary Proceedings:
- A. Where not accompanied by the proper filing fee.
  - B. Where not accompanied by a properly completed Adversary Proceeding Cover Sheet [B104].
  - C. Where offered for filing by an attorney not admitted to practice before this Court.
3. Proofs of Claim
- A. Where the claim does not contain the caption of the case or the case number.
  - B. Where not properly signed by the claimant or an authorized agent.
4. Motions and Other Pleadings:
- A. Where offered for filing by an attorney not admitted to practice before this Court pursuant to Local Rule 2090-1.
  - B. Where offered for filing by a corporation or its agent or employee, other than an attorney for the corporation who is admitted to practice before the Court.
  - C. Where not accompanied by a proposed order for entry by the Court.

The Bankruptcy Judge will review any deficient document which has been submitted by the Clerk and issue either an order rejecting the filing of the document or an order which instructs the party who submitted the document to correct the deficiency within a certain period of time.

5003-2            Court Papers - Removal Of (new number)

2.14                    Removal of Papers from Custody of Clerk (old number)

Original documents on file in the office of the Clerk of the Bankruptcy Court shall not be produced pursuant to a subpoena from a state court unless the Clerk is ordered to produce the documents by a District Judge, a United States Magistrate, or a Bankruptcy Judge having jurisdiction in this district. Certified copies of documents may be produced for evidentiary purposes in a state court action upon payment to the Clerk of the proper fee.

Cross reference  
Appendix A (Fees)

5005-4            Electronic Filing (new number)

2.15                    Facsimile Practice (old number)

Pleadings or other papers are not to be transmitted for filing to the Clerk's office via a facsimile machine, except when, and as, authorized by the Court or the Clerk. Signed originals or pleadings transmitted by facsimile must be filed with the Clerk within three (3) business days.

5003-3            Court Records - Automation Of (new number)

2.16                    BANCAP System (old number)

COMMENT

Effective December 1, 1988, the Clerk's office converted to a computer-based on-line notice and docketing system known as BANCAP. In conjunction with this system, individuals now have access to case information by calling the Voice Case Information System (VCIS). With the use of any standard touch-tone telephone, an individual may dial 347-5337, punch in the exact spelling of the debtor's name using the alphabet letters on the number buttons, and the computer will read the most current information available about that debtor's case.

***PROCEEDINGS IN BANKRUPTCY***

1002-1 Commencement of Case (new number)

3.01 Commencement of Case (old number)

A voluntary or involuntary case is commenced by filing a petition with the Clerk of the Bankruptcy Court together with the required filing fee. A voluntary petition shall conform substantially with Official Form 1 of the Bankruptcy Rules and the involuntary petition shall conform substantially with Official Form 5. A separate voluntary petition must be filed by each entity seeking an order for relief, except where the filers are individual debtors filing a joint petition.

Cross reference

Bankruptcy Rules 1002; 1006  
Official Bankruptcy Forms 1 and 5

1007-1 Lists, Schedules and Statements (new number)

3.02 Filing of Petition and Required Forms (old number)

(a) Number of Copies

In a case under CHAPTER 7, there shall be filed:

an original and two copies of the petition and all required forms, except for the mailing matrix, of which the original only shall be filed, and, for corporate debtors, the certificate of corporate resolution, of which the original only shall be filed.

In a case under CHAPTER 11, there shall be filed:

an original and five copies of all required forms, except the mailing matrix, of which the original only shall be filed, and, for corporate debtors, the certificate of corporate resolution, of which the original only shall be filed.

In a case under CHAPTER 13, there shall be filed:

an original and four copies of all required forms, except the mailing matrix, of which the original only shall be filed.

(b) Sequential Order of Filing Required Forms

The sequential order of filing the required forms does not vary from chapter to chapter. However, not all of the forms listed below may be applicable to your specific filing under the Bankruptcy Code.

- Form 1 - Voluntary Petition
- Form 2 - Declaration Under Penalty of Perjury on Behalf of a Corporation or Partnership
- Form 3 - Application and Order to Pay Filing Fee in Installments
- Form 4 - List of Creditors Holding 20 Largest Unsecured Claims
- Form 6 - Summary of Schedules; Schedules A through J; Unsworn Declaration under Penalty of Perjury
- Form 7 - Statement of Financial Affairs
- Form 8 - Chapter 7 Individual Debtor's Statement of Intention

Cross reference  
Bankruptcy Rule 1007

1007-4 Lists, Schedules and Statements - Extensions of Time (new number)

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3.03                    Extensions of Time to File Statements and Schedules (old number)

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Motions for an extension of time for filing schedules and statements shall state the grounds therefore with specificity. Such motions shall be served on the United States Trustee in addition to the parties specified in Bankruptcy Rule 1007(c). The proposed order accompanying said motion shall provide that all schedules and statements shall be filed and served on the case trustee and the United States Trustee no later than five (5) days before the scheduled § 341 meeting.

1007-5 Lists, Schedules and Statements - Cost of Preparation by Person Other Than Debtor (new number)

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3.04                    Cost of Preparation of Lists, Schedules, or Statement of Affairs by Person Other Than Debtor (old number)

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If any list, schedule, or statement required to be prepared and filed under Bankruptcy Rule 1007 is not timely prepared and filed, and if the Court orders the trustee, petitioning creditors, creditors' committee, or other party to file the list, schedule, or statement, such party who prepares it may make application to be reimbursed by the debtor's estate as an administrative expense.

Cross reference  
Bankruptcy Rule 1007(k)

1007-6            Lists, Schedules and Statements - Deficiencies In (new number)

3.05                    Deficiencies in Filing Petitions, Schedules, and  
Statement of Affairs (old number)

The Court may give notice to the debtor or debtor's counsel of any material deficiencies in the documents filed, which deficiencies, if not corrected would impair the performance of the Clerk's duties under the Bankruptcy Code and Rules. Failure to correct the deficiencies noted may be deemed sufficient cause for the Court to dismiss the case.

1007-2            Mailing - List or Matrix (new number)

3.06                    The Mailing Matrix (old number)

The petition must be accompanied by the mailing matrix. The BANCAP system has the capability to scan read into computer memory the list of creditors through the use of an optical scanner. The list of creditors must be presented as shown by Appendix B to these rules to be properly read by the optical scanner.

The mailing matrix for all voluntary petitions in Chapter 7, 11, 12 and 13 cases shall include the full names and addresses of all creditors and interested parties. For a case filed under Chapter 11, the matrix shall also include the names and addresses of all shareholders. In Chapter 7 and 11 cases the matrix shall list any general and/or limited partners, if applicable. In Chapter 13 cases the matrix shall list the debtor's employer. The following names and addresses need not be included on a debtor's matrix as this information will be scanned into the BANCAP system by the Clerk's office in all cases:

1. Debtor(s)
2. Debtor's counsel
3. Trustee (if applicable)
4. United States Trustee  
300 Virginia Street E., Room 2025  
Charleston, WV 25301
5. United States Attorney's Office  
P. O. Box 1713  
Charleston, WV 25326

6. Chief, Special Procedures Staff  
Internal Revenue Service  
425 Juliana Street, Room 2202  
Parkersburg, WV 26101
7. West Virginia State Department of Tax and Revenue  
P. O. Box 766  
Charleston, WV 25323-0766
8. Branch of Reorganization, Atlanta District Office  
U. S. Securities and Exchange Commission  
Suite 1000, 3475 Lenox Road, NE  
Atlanta, GA 30326-1232

Cross reference  
Appendix B (Mailing Matrix Format)

1010-1          Petition - Involuntary (new number)

3.07                  Involuntary Petition (old number)

An involuntary petition, upon filing, must be accompanied by a mailing matrix in the format set forth in Appendix B. The mailing matrix shall include the full name and addresses of the petitioning creditor(s) and counsel for petitioning creditor(s). The petition must also be accompanied by a summons to Debtor (Form BK 13).

For involuntary cases, after entry of an order for relief, the debtor shall file in matrix form:

- (1) within fifteen (15) days: Name and address of all equity security holders (shareholders); and
- (2) Within fifteen (15) days: Name and address of all other creditors.

Cross reference  
Bankruptcy Rules 1003; 1010; 1011; and 1013  
(Involuntary petitions, generally)  
Bankruptcy Rule 1007(a)(2)

5080-1            Fees - General (new number)

3.08                    Filing Fee (old number)

Filing fees for cases filed under Chapter 7, 9, 11, 12 and 13 of the Bankruptcy Code are prescribed by the Judicial Conference and may be found in 28 U.S.C. § 1930. Appendix A sets forth the current filing fees.

Cross reference  
28 U.S.C. § 1930  
Bankruptcy Rule 1006  
Official Bankruptcy Form 3  
Appendix A (Fees)

2002-1            Notice to Debtors' Employers (new number)

3.09                    Instructions to Employers Regarding Wages (old number)

Vacated by General Order 98-02.

Cross reference  
Appendix C (Debtor's Request for Order and Notice of  
Instruction to Employer and Order and Notice of  
Instruction to Employer(s) Regarding Wages)

1015-1            Joint Administration/Consolidation (new number)

3.10                    Procedural and Substantive Consolidation (old number)

A party desiring to have bankruptcy cases consolidated procedurally, substantively, or for some other purpose must file a written motion requesting consolidation. Subsections (a) and (b) are applicable only after consolidation is granted by the Court.

(a) Procedural consolidation

Cases that are procedurally consolidated are consolidated for noticing purposes only (they will share a joint mailing matrix). The party seeking procedural consolidation shall file a consolidated mailing matrix for each case included in the consolidation within ten (10) days from the date of the order granting the consolidation.

A pleading, order, or notice which concerns a matter in only one of the procedurally consolidated cases shall be docketed and filed in that case only, but shall reflect the consolidation by stating, in parentheses below the style of the case, "(Procedurally consolidated with Case No.(s) \_\_\_\_\_)".

A pleading, order, or notice which concerns a matter in all of the procedurally consolidated cases shall contain the style of the cases and shall reflect the consolidation by stating, in parentheses below the style of the cases, "(Procedurally consolidated)". Any such pleading, order, or notice shall be accompanied by a sufficient number of copies to be docketed and filed in all of the case files.

(b) Substantive consolidation

Cases are substantively consolidated when the assets and liabilities of the debtors are consolidated. When a case is substantively consolidated, the movant shall file within ten (10) days from the date of the order granting consolidation a mailing matrix for the combined cases. All further pleadings, order, and notices shall contain the style of the consolidated cases and the style shall reflect the consolidation by stating, in parentheses below the style of the cases, "(Substantively consolidated)".

(c) Modification of Procedure

The Court may, by administrative order, sua sponte or upon a motion of a party, modify the rules and procedures applicable to procedural or substantive consolidation.

1009-1          Amendments to Lists and Schedules (new number)

3.11                  Amendment Practice (old number)

(a)      Fee Required

An amendment fee is required as prescribed by the Judicial Conference in 28 U.S.C. § 1930 (See Appendix A for current fee) if the amendment affects Official Form 6, Schedules D, E or F, or the mailing matrix.

(b)      Verification

The amendment shall be verified by the debtor.

(c)      Certificate of Service

Amendments to Official Bankruptcy Form 6, Schedules A, B, C, D, E or F must be accompanied by a certificate of service indicating that a copy of the amendment has been served on each party named therein or affected thereby, the trustee, and the examiner, if any.

(d)      Copies

The same number of copies shall be filed as required by Local Rule 1007-1(a).

(e)      Non-Conforming Amendments

Amendments which do not conform to these criteria may be refused for filing or returned.

Cross reference  
Bankruptcy Rule 1009  
Appendix A (Fees)

1019-1          Conversion - Procedure Following (new number)

3.12                  Conversion of a Chapter 11 or 13 Case to a Chapter 7 Case (old number)

[RESERVED]

Cross reference  
Bankruptcy Rules 1017(d) and 1019  
Local Rule 2083-5

5071-1            Continuance (new number)

3.13                    Continuances (old number)

Continuances of hearings and other proceedings, except Section 341 meetings, may be had only upon written motion served upon those parties served with the original pleading or order setting the matter for hearing and on any party who filed a responsive pleading. The motion shall set forth with particularity the grounds for the continuance and shall be accompanied by an order granting the relief requested. Absent extraordinary circumstances, the motion must be filed as soon as possible, but not less than five (5) working days before the scheduled proceeding. Requests for continuance made less than five (5) working days before the scheduled proceeding must be by telephone to the Clerk who will instruct the parties as to further pleadings and notice required.

2004-1            Depositions and Examinations (new number)

3.14                    Rule 2004 Examinations (old number)

Bankruptcy Rule 2004 provides for discovery within a bankruptcy case. Upon proper motion, the Court may order that a person appear and be examined.

The proponent of a motion for examination shall attempt to arrange a mutually agreeable time, place and date for the examination and the motion shall reflect the agreement of the parties; if there is such an agreement, an order shall be tendered with the motion which likewise sets the agreed time, place and date of the examination.

In the event the parties cannot agree on the terms of the examination, the motion shall state that no agreement could be reached. The Court may then grant the motion ex parte or may schedule a hearing on the motion.

The Clerk's office will issue a subpoena to appear at the 2004 exam only upon written request in the motion or otherwise.

Cross reference  
Bankruptcy Rule 2004

9016-1 Subpoena (new number)

3.15 Subpoena Practice (old number)

A subpoena in a main bankruptcy case, in an adversary proceeding, or for a Rule 2004 Examination shall be issued in the manner and form as prescribed by Rule 45 of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 9016.

Cross reference  
Rule 45, F.R.Civ.Pro.  
Appendix K

1007-3 Statement of Intention (new number)

3.16 Surrender of Secured Property (old number)

Chapter 7 Case

If a Chapter 7 debtor fails to perform his intentions as set forth on Official Form 8, Statement of Intention, within the time specified in 11 U.S.C. § 521(2)(B), or if the debtor fails to file a Statement of Intention, creditors holding security for a consumer debt may file a motion with the Court asking that the debtor be required to comply with 11 U.S.C. § 521(2) and for relief appropriate under the circumstances.

Cross reference  
11 U.S.C. § 521  
Official Bankruptcy Form 8

2016-1 Compensation of Professionals (new number)

3.17 Fee Applications (old number)

The debtor's attorney must file Bankruptcy Form BK 92 "Disclosure of Compensation Under 11 U.S.C. § 329 and Bankruptcy Rule 2016(b)" at the time of filing the debtor's petition. The United States Trustee reviews initial retainers for propriety.

In a case under Chapter 11, fee applications after the initial disclosure should not be filed earlier than every 120 days, unless the Court allows consideration of applications at an earlier time. Any professional seeking early consideration of fee applications shall file a motion to shorten the filing period which states the grounds for such early consideration.

All fee applications shall conform with the Bankruptcy Code and Rules. A fee application shall contain, at a minimum, the following:

- (1) description of services rendered sufficient to inform parties in interest of the work performed;
- (2) time expended for each task;
- (3) hourly rate for each partner, associate and paralegal rendering services for which compensation is requested;
- (4) an itemization of expenses incurred; and
- (5) a statement as to the amount of retainers or other payments made or promised to the applicant for services, together with applicable information as to the source of compensation paid or promised, whether any compensation previously received has been shared, and a disclosure of any understanding which exists regarding the requested compensation.

Fee applications for attorneys' fees and expenses incurred up to the date of conversion or the effective date of a plan shall be filed with the Court within sixty (60) days after entry of a conversion order or order approving plan of reorganization.

Cross reference  
11 U.S.C. §§ 329 and 330

4004-1            Discharge Hearings (new number)

3.18                    Discharge Hearing (old number)

Unless otherwise ordered, debtors shall not be required to attend a discharge hearing.

Cross reference  
11 U.S.C. § 524

5010-1 Reopening Cases (new number)

3.19 Reopening Practice (old number)

A motion to reopen a closed Chapter 7 or 13 bankruptcy case shall state with particularity the grounds for the relief sought. The U.S. Trustee and any party affected by a reopening of the case shall be served with a copy of the motion and any supporting documents.

The Court shall schedule a hearing on the motion to reopen. The movant has the burden of showing proper grounds for the reopening of a case. Whether or not a case is reopened is within the sole discretion of the Bankruptcy Judge. If the motion to reopen is granted, the Court will determine if a fee is required.

If the case is reopened to add a debt for some other reason not requiring further administration of the case by a trustee, the movant has the duty to prepare a proposed order closing the case.

Cross reference  
11 U.S.C. § 350(b)  
Appendix A (Fees)

***UNITED STATES TRUSTEE***

2003-1 Meeting of Creditors and Equity Security Holders (new number)

4.01 Section 341 Meeting of Creditors (old number)

The United States Trustee shall be responsible for scheduling the date, time and place of the Section 341 meeting of creditors.

(a) Motion to proceed with case absent debtor's attendance at Section 341 meeting.

In the event of extreme life or health endangering circumstances and no alternative means of examining the debtor, the debtor may request that the Court permit the case to proceed without the debtor's attendance at the Section 341 meeting by filing a motion to excuse. Any such motion shall specifically state the circumstances which make the debtor unable to attend the meeting. Representations that a debtor's health prohibits his attendance should be verified by a statement signed by the debtor's physician. All such motions must also reflect that debtor's counsel has contacted the Office of the United States Trustee in an attempt to find an alternate means of examining the debtor. Upon the filing of a motion to excuse and proper service of such motion upon the trustee and United States Trustee, the

Court shall schedule a hearing to consider such motion and the Clerk shall give notice of such hearing to all parties in interest.

The Bankruptcy Clerk shall have the authority to enter a form order which denies a motion to excuse debtor from attendance at the Section 341 meeting of creditors and instructs the debtor and his counsel of the requirements of local Rule 4.01(a).

(b) Counsel for the debtor(s) to mail notice of continued Section 341 meeting.

In the event a debtor fails to appear for a Section 341 meeting of creditors or requests continuance of such a meeting after the initial notice of the meeting has been mailed by the Clerk, counsel for the debtor shall obtain a notice of the continued meeting from the Office of the United States Trustee and shall mail such notice of the continued meeting to all creditors, the trustee, and the United States Trustee within the time specified by the United States Trustee. Counsel for the debtor shall file with the Court a certificate of such service, within three (3) days of such mailing.

Cross reference  
Bankruptcy Rule 2003  
11 U.S.C. § 341

9034-1            United States Trustees - Service of Pleadings Upon (new number)

4.02                    Service of Pleadings Upon United States Trustee (old number)

All pleadings (including, but not limited to, motions, applications, and monthly operating reports) and any other papers filed with the Clerk shall be served upon the U. S. Trustee at P. O. Box 3740, Charleston, West Virginia, 25336. The following documents need not be served on the U. S. Trustee:

1.     Petition (copy transmitted by Clerk)
2.     List of creditors (copy transmitted by Clerk)
3.     Official Bankruptcy Form 6, Schedules A-F, I and J (copy transmitted by Clerk)
4.     Proofs of Claim
5.     Pleadings in Adversary Proceedings (unless a Notice of Appearance is filed by the United States Trustee)

Cross reference  
Bankruptcy Rule 9034  
Local Rule 1007-1

**CHAPTER 11 CASES**

3017-1 Disclosure Statement - Approval (new number)

5.01 Notice of Hearing on Disclosure Statement and Plan  
to be Sent by Counsel for Proponent (old number)

Unless otherwise ordered by the Court, counsel for the proponent of a disclosure statement and plan shall mail copies of the orders setting hearings on the disclosure statement and confirmation of the plan, along with copies of the necessary related documents, to all parties in interest and shall certify such mailing to the Court within (3) days of such mailing. Counsel for the proponent shall mail the notice of hearing by using copies of the mailing matrix provided by the Clerk of the Bankruptcy Court.

Cross reference  
Bankruptcy Rule 3017

3018-1 Ballots - Voting On Plans (new number)

5.02 Ballots on Plans (old number)

(a) Ballots on plans shall instruct all parties entitled to vote on the plan to submit their ballot directly to counsel for the proponent of the plan.

(b) Unless otherwise ordered by the Court, counsel for the proponent of the plan shall tabulate the ballots, by class, and shall file the original ballots and tabulation with the Clerk of the Bankruptcy Court not less than three (3) working days prior to the hearing on confirmation.

(c) Counsel for the proponent of the plan shall certify to the Court that Local Rule 5.02(b) has been complied with and that all ballots received by the proponent have not been modified and have been properly accounted for in the tabulation.

(d) Upon request, the Clerk shall make ballots available for inspection by parties in interest.

Cross reference  
Bankruptcy Rules 3017(d), 3018  
Official Bankruptcy Form 14

2015-2 Debtor-In-Possession Duties (new number)

5.03	<u>Operating Order</u> (old number)
5.04	<u>Closing of Case</u> (old number)
5.05	<u>Post-Confirmation Quarterly Reports May be Required</u> (old number)

(a) Operating Order

[RESERVED]

Cross reference  
Appendix D (Operating Order)

(b) Closing of Case

Every six months after a Chapter 11 plan has been confirmed, the debtor in possession or trustee shall file a report with the Court and with the U.S. Trustee which describes the debtor's progress toward consummation of the plan. The U.S. Trustee shall review the report and may move to close the case or seek other relief as the circumstances may require.

(c) Post-Confirmation Quarterly Reports May be Required

The order of confirmation may require the debtor in possession or trustee to file quarterly financial reports following confirmation.

**CHAPTER 13 CASES**

2083-1 Chapter 13 - Wage Withholding (new number)

6.01	<u>Wage Withholding</u> (old number)
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When the Chapter 13 plan is filed, the Court will issue an order to the debtor's employer to withhold from the debtor's wages an amount equal to the proposed payments under the debtor's plan. If the debtor does not wish to be subjected to wage withholding, a motion must be submitted with the petition that sets forth why wage withholding would not be in the best interest of the debtor, the creditors or the Trustee. Absent filing of such a motion, withholding will commence the first pay period following the filing of the plan and service of the Withholding Order on the debtor's employer.

Cross reference  
Appendix E, Form No. 1  
(Order to Commence Withholding)

2083-2 Chapter 13 - Filing of Plan; Commencing of Payments and Payments to Secured Creditors (new number)

6.02 Filing of Plan; Commencing of Payments and Payments to Secured Creditors (old number)

(a) The debtor must file his/her Chapter 13 plan within fifteen (15) days from the date the Chapter 13 petition is filed with the Court. An "Order of Conditional Dismissal for Failure to File Chapter 13 Plan" will be issued in cases where plans are not filed within fifteen (15) days of the petition.

(b) The debtor shall commence making the payments proposed by the plan to the Chapter 13 Trustee within thirty (30) days after the plan is filed.

(c) The Chapter 13 Trustee shall, within thirty (30) days of the filing of the plan and commencement of payment, begin payments to secured claimants and taxing authorities designated by the debtor to receive monthly payments under the plan. Each payment disbursed shall be in an amount equal to that so specified within the plan narrative and shall continue until such time as the plan is confirmed, the payment is otherwise modified and/or the value of collateral securing said claim is determined. The Chapter 13 Trustee may include, in calculating the trustee's expenses, payments to secured creditors and taxing authorities made pursuant to this rule only upon confirmation of the debtor's plan.

(d) Counsel for a Chapter 13 debtor should be prepared to offer evidence at the confirmation hearing on the actions taken by the debtor to accomplish the surrender in accordance with the terms of the debtor's plan.

Cross reference  
Bankruptcy Rule 3015  
11 U.S.C. § 1326(a)(1)

2083-3 Chapter 13 - Notice of 341(a) Meeting of Creditors; Objections to Plan; Valuation of Property; and Trustee's Recommendation on Confirmation (new number)

6.03 Notice of 341 (a) Meeting of Creditors; Objections to Plan; Valuation of Property; and Trustee's Recommendation on Confirmation (old number)

(a) Notice

Notice of the initial 341(a) meeting will be sent by the Chapter 13 Trustee. A copy of the Chapter 13 plan or a summary of the plan will accompany the notice. This notice will set forth the date, time and location of the 341(a) meeting, the time for filing objections to confirmation of the Chapter 13 plan, the time for filing objections to valuation of secured property, the date, time and location of the Trustee's settlement conference to resolve plan objections and the date, time and location of the confirmation hearing.

(b) All chapter 13 plans, including amended plans, must be filed using Local Form E-2 and will be served upon all creditors and parties in interest by the Chapter 13 Trustee.

Cross Reference

Appendix E, Form No. 2  
Appendix E, Forms No. 3 and 4 with  
Instructions to Debtor's Attorney

(c) Objection to Confirmation of the Chapter 13  
Plan and/or Valuation of Secured Property

All objections to the plan must be filed by the date set forth in the initial 341(a) meeting notice. A copy of all objections must be served on the debtor and Trustee.

(d) Trustee's Settlement Conference

The Trustee will conduct a settlement conference prior to each confirmation hearing where there are objections to confirmation or valuation of secured property. The debtor and parties who have pending objections to confirmation or valuation of secured property are required to attend this conference to attempt to resolve the objections with the Trustee prior to the confirmation hearing. The settlement conference will be scheduled immediately prior to the confirmation whenever possible. Plans that have all objections resolved at the settlement conference will be

heard pursuant to the confirmation procedure under subpart (f) below. Plans with unresolved legal or factual objections will be given a full hearing. Objections not resolved at the settlement conference will be heard at the confirmation hearing.

(e) Trustee's Recommendation on Confirmation and Valuation of Secured Property

The Trustee will review all plans and schedules and will promptly raise all objections necessary to require amendments necessary to bring plans into compliance with the Code, including requiring all disposable income to be committed to the plan. Recommendation on confirmation of the plan and valuation of all secured property will be presented the earlier of three (3) working days following the Trustee's settlement conference or the confirmation hearing in a format prescribed by the Court.

(f) Confirmation Hearing Day

All plans which have no outstanding objections may be confirmed at the scheduled confirmation hearing without further comment from the parties. Plans with outstanding objections will be heard in turn. Those cases which have objections that cannot be timely heard on confirmation day will be continued pursuant to the suggestion of the Chapter 13 Trustee or as the Court finds necessary.

Comment

The 341(a) meeting notice will set a confirmation hearing with each Chapter 13 filed and will set forth the provisions of sections b, c, and d above.

2083-4 Chapter 13 - Distributions (new number)

6.04 Distributions (old number)

The trustee shall not make any distribution of funds prior to ten (10) days after the entry of the confirmation order except on order of the Court.

2083-5 Chapter 13 - Dismissal or Conversion (new number)

6.05 Dismissal or Conversion (old number)

When the case is either dismissed or converted, the Chapter 13 Trustee shall dispose of undistributed monies in his custody as follows:

a. if the plan has been confirmed at hearing, the funds shall be distributed to creditors in accordance with the confirmed plan without the necessity of the creditor filing a motion to lift stay in the Chapter 7 case;

b. if the plan has not been confirmed, the Chapter 13 Trustee shall prepare notice to all creditors of monies to be returned to the debtor. The Bankruptcy Clerk shall mail the notice to the Chapter 13 creditor body. Unless a written objection is filed within ten (10) days, the Trustee shall pay all funds collected to the debtor through his/her attorney.

Cross reference  
Bankruptcy Rule 1019  
11 U.S.C. § 1326

***PROOFS OF CLAIM***

3001-1 Claims and Equity Security Interests - General (new number)

7.01 Filing and Serving (old number)

In Chapter 7, 9, 11 and 12 cases the original proof of claim shall be filed with the Clerk's office in accordance with Bankruptcy Rules 3002 - 3005 and 5005. In Chapter 13 cases, the creditor must file an original and one duplicate.

To obtain verification of the filing of a proof of claim, one additional copy and a postage-paid return envelope must be submitted to the Clerk's office.

3007-1 Claims - Objections (new number)

7.02 Filing and Serving of Objections (old number)

A party who files an objection to the allowance of a claim shall file it with the Clerk's office and shall serve a copy of the objection on the creditor filing the claim and on the following:

(a) Chapter 7, 12, and 13 cases - Debtor and Trustee

(b) Chapter 11 cases - Debtor in possession and, if applicable, Chapter 11 Trustee, and counsel or chairman of any creditors' committee.

***MOTION AND NOTICE PRACTICE***

9013-1            Motion Practice (new number)

8.01                    Motion and Notice Practice Generally (old number)

(a) Main bankruptcy case

Motions in main bankruptcy cases are governed by Part IX of the Bankruptcy Rules, as supplemented by these Local Rules.

(b) Adversary proceedings

Motions in adversary proceedings are governed by the Federal Rules of Civil Procedure to the extent made applicable by Parts VII and IX of the Bankruptcy Rules.

(c) Papers to accompany motions

Each motion filed with the Clerk shall be accompanied, where applicable, by the following papers:

1. A proposed order which, if entered by the Court, would grant the relief sought by the motion;
2. A notice, [See LR9013(d)];
3. A certificate of service required by these Rules or the Bankruptcy Rules which states the name and address of every party served and the method by which service was obtained, provided that if the entire creditor body is served, the certificate of service may recite service on "all creditors listed on the mailing matrix on file in the Bankruptcy Clerk's Office as of (date)."

(d) Notices

There are generally two types of notices in a bankruptcy case. First is a hearing notice which states with particularity the nature of the pleading and relief sought and which sets forth a date on which a hearing will be held, and, if applicable, a date on which to file any objections thereto. The other type of notice is a "negative notice." A negative notice sets forth with particularity the nature of the pleading and relief sought and provides that an order may be entered granting the relief requested unless a written objection is filed within \_\_\_\_\_ days of the date of the mailing of the notice.

The BANCAP system generates most notices of hearing on routine motions and applications. However, a movant must prepare a notice for the following:

1. Notice of Motion to Compromise - The movant is required to prepare a twenty (20) day negative notice and file it with the Clerk who shall serve it in accordance with Bankruptcy Rule 2002(a).
2. Notice of Proposed Use, Sale, or Lease of Property - The seller is required to prepare a twenty (20) day negative notice which contains the terms as set forth in Bankruptcy Rule 2002(c) and file it with the Clerk who shall serve it in accordance with Bankruptcy Rule 2002(a). The notice shall be single spaced and ordinarily no longer than one page in length.
3. Notice of Motion to Sell Free and Clear of Liens and Other Interests Pursuant to Bankruptcy Rule 6004(c) - the movant has the discretion to either file a motion to sell free and clear of liens which requests that a hearing on the motion be scheduled, or file a motion and negative notice (see below).  
  
-If the movant selects the latter option, he is required to prepare a twenty (20) day negative notice which contains the terms as set forth in Bankruptcy Rule 2002(c) and which contains blanks for the hearing date, time, and place, if an objection or request for hearing is filed. Such notice shall be filed with the Clerk, along with the motion to sell free and clear of liens or other interests.
4. Notice of Motion for Relief from Automatic Stay (Chapter 7) - The movant shall prepare a fifteen (15) day negative notice and serve it on the parties as set forth in Local Rule 4001-1(a).
5. Notice of Motion for Relief from Automatic Stay; Notice of Preliminary Hearing (Chapter 11) - Movant shall prepare a hearing notice in conformance with Local Rule 4001-1(c) and file it with the Clerk who shall serve it on all parties listed on the debtor's mailing matrix.

6. Notice of Motion for Redemption - Counsel for the debtor shall prepare a twenty (20) day negative notice and serve it on the affected creditor(s) in accordance with Local Rule 6008-1.

7. Notice of Motion to Avoid Lien - Counsel for the debtor shall prepare a twenty (20) day negative notice and serve it on parties set forth in Local Rule 4003-2.

(e) Withdrawal of motion by notice.

When a motion has been filed with the Court, but the relief requested is no longer necessary or desired and the Court has not acted on it, the movant shall file and serve on affected parties a notice of withdrawal of motion. If a hearing on the motion has been scheduled, the movant shall notify the Clerk by telephone of the filing of the notice to withdraw, whereupon the hearing can be removed from the Court's docket and the movant is excused from its obligation to appear.

(f) Construction

For the purpose of these local rules, a party is not deemed to be "affected" by the relief sought or the action sought to be taken solely because such party is the holder of an unsecured claim against or equity interest in the debtor.

Cross reference

Appendix F, Form No. 1 - Notice of Hearing; Form No. 2 - Negative Notice; and Form No. 3 - Notice of Proposed Compromise  
General Order 98-01, Forms 20A and 20B

4001-1 Automatic Stay - Relief From (new number)

8.02 Motion to Modify Automatic Stay (old number)

All motions for relief from the automatic stay must be accompanied by a filing fee or an agreed order (See Appendix A).

(a) Chapter 7 cases:

A motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(a), along with a notice in substantially the form set forth in Appendix F, Form No. 4, shall be served by the movant on the debtor, the debtor's attorney, the trustee, and any other party affected by the relief sought. The motion shall state the amount owed on the obligation, the estimated value of the property, if applicable, and shall contain any

necessary attachment which shows proof of perfection. If no response to the motion is filed within fifteen (15) days, the Court may grant the motion without hearing if it presents adequate grounds for the relief requested. If an objection is filed, the Clerk will give notice of the date, time, and place of hearing. An objection shall contain specific language regarding what is being objected to.

A motion for relief from the automatic stay on a residence will be set for hearing before the Court, unless the Statement of Intention indicated the home would be surrendered or the moving party alleges cause that merits immediate consideration by the Court and the debtor does not respond or object.

(b) Chapter 13 cases:

A motion for relief from the automatic stay in a Chapter 13 case shall be served on the debtor, debtor's counsel, the Chapter 13 Trustee, and any other affected party. A hearing will be held on the motion, unless an agreed order is submitted which contains the signature of all parties affected by the agreement.

(c) Chapter 11 cases:

A motion for relief from the automatic stay in a Chapter 11 case shall be served by the movant on the trustee and/or debtor, the trustee and/or debtor's attorney, the U.S. Trustee, the chairman and counsel of any creditors' committee, and any other party affected by the relief sought. The motion shall include proof of perfection, a statement of value, and a statement of amount owed on the obligation.

The movant shall also prepare a notice in substantial conformance with Form No. 5, Appendix F, which identifies the collateral, the amount of secured debt, and which leaves a blank for a date, time, and place for the preliminary hearing. (Preliminary hearings will always be set in Chapter 11 cases unless otherwise ordered by the Court.) The notice shall require movant's counsel and any other party with an objection or response to the motion to appear at the preliminary hearing and be prepared to make their representations and legal argument to the Court. Parties will not be required to produce fact or expert evidence and testimony at the preliminary hearing unless the Court otherwise orders upon the request of a party. Failure of the debtor or debtor's counsel to appear at the preliminary hearing may result in the Court entering an order granting the relief requested without further hearing. The Clerk's office shall mail the notice to all parties listed on the mailing matrix.

The movant will prepare and submit no later than three (3) days after the preliminary hearing an order which reflects appearances at the hearing, whether or not the objections were resolved, and when the final hearing will be held, if one is

necessary. This order will be mailed only to parties who appeared at the preliminary hearing.

Cross reference

11 U.S.C. § 362

Bankruptcy Rules 4001(a) and (d); 9014

Appendix A (Fees)

Appendix F, Forms No. 4 and 5

Local Rule 9013-1(d)(4) and (d)(5)

4001-2 Cash Collateral (new number)

8.03 Motion to Use Case Collateral (old number)

[RESERVED]

Cross reference

11 U.S.C. § 363(c)(2)

Bankruptcy Rules 4001(b) and (d); 9014

4001-3 Obtaining Credit (new number)

8.04 Motion to Obtain Credit (old number)

[RESERVED]

Cross reference

11 U.S.C. § 364

Bankruptcy Rules 4001(c) and (d); 9014

4008-1            Reaffirmation (new number)

8.05                    Reaffirmation Agreements (old number)

A reaffirmation agreement filed by a debtor represented by counsel shall include, at a minimum, the following:

1. the amount of the debt reaffirmed;
2. the annual rate of interest to be paid (variable rate home mortgage must state the initial rate and terms governing rate changes);
3. the amount of periodic payment;
4. the number of payments remaining; and
5. a statement that the debtor understands the agreement may be rescinded prior to entry of the discharge order or within sixty (60) days of filing the agreement, whichever occurs later.

If the debtor is represented by an attorney, the attorney shall file his affidavit with the reaffirmation agreement, which affidavit shall reveal that the debtor entered into the agreement voluntarily and after having been duly informed, and that such agreement does not impose an undue hardship upon the debtor or his dependents.

If the debtor was not represented by an attorney during negotiation of the reaffirmation agreement, a hearing shall be held and the Court, at the time of the reaffirmation hearing, shall inquire of the debtor to insure that the agreement was knowingly and voluntarily entered into, that the agreement will not impose a burden upon the debtor and is in the best interests of the debtor, and that the debtor understands his rights with regard to rescission of the agreement.

Cross reference

11 U.S.C. § 524(c) and (d)  
Bankruptcy Rule 4008  
Appendix F. Form No. 6

6004-1            Sale of Estate Property (new number)

8.06                    Use, Sale, or Lease of Property Other than  
in the Ordinary Court of Business (old number)

- (a)    Sale of Unencumbered Property

The seller is required to prepare and file a twenty (20) day negative notice which contains terms in compliance with Bankruptcy Rule 2002(c)(1). The Clerk shall serve the notice in accordance with Bankruptcy Rule 2002(a)(2).

(b) Sale Free and Clear of Liens and Other Interests

A sale free and clear of liens and other interests requires the filing of a motion by the movant. The movant shall serve the motion on parties who have liens or other interests in the property to be sold. The movant may either file a twenty (20) day negative notice with the motion or request in the motion that the matter be set for hearing. If the movant selects the former option, he must prepare a twenty (20) day negative notice which contains the terms required by Bankruptcy Rule 2002(c)(1) and contains blanks for a hearing date, time, and place if an objection or request for hearing is filed. The Clerk shall serve the notice in accordance with Bankruptcy Rule 2002(a)(2).

Cross reference  
11 U.S.C. §363(b)  
Bankruptcy Rule 6004  
Bankruptcy Rules 2002(a), (c) and (i); 9014  
Local Rules 9013(d)(2) and (3)

6006-1 Executory Contracts (new number)

8.07 Assumption, Rejection and Assignment of  
Executory Contracts (old number)

A motion to extend the time within which to assume, reject, or assign an executory contract or unexpired lease may be granted by the Court, in the first instance, without a hearing if good cause has been shown for the extension. The movant shall submit a proposed order (See Appendix F, Form No. 7) with the motion. The order shall give notice that the motion is granted unless a written objection to the extension is filed within twenty (20) days of the entry of the order and after hearing on the objection the Court determines relief from the order is warranted. The movant shall serve the order on all nondebtor parties to the contract or lease.

Comment

The provisions of 11 U.S.C. § 365(d)(4) require the Court to act on orders extending the time to assume or reject unexpired leases on non-residential real property within the 60-day period following the order for relief. Motions for such relief must be filed in sufficient time to permit the Court to act.

Cross reference  
11 U.S.C. § 365  
Bankruptcy Rules 6006; 9014  
Appendix F, Form No. 7

6007-1      Abandonment (new number)

8.08                      Abandonment of Estate Property in Chapter 7 Cases (old number)

A party in interest may file and serve a motion to compel the Trustee to abandon property of the estate pursuant to Bankruptcy Rule 6007(b). The motion to compel abandonment must be accompanied by the required filing fee (See Appendix A). The party filing the motion shall serve it on the U. S. Trustee.

A secured creditor may expedite the abandonment of estate property by obtaining a "Trustee's Proposed Intent to Abandon Property" form (See Appendix F, Form No. 8) from the Clerk's office and by completing it and forwarding it to the appropriate Chapter 7 Trustee. The form must be accompanied with a copy of evidence of a properly recorded security interest, in a manner satisfactory to the trustee. The creditor is responsible for the filing and service of the completed form, by either mailing the abandonment or by having the Clerk's office mail it, in compliance with the instructions set forth in the back of the form. No filing fee is required to be paid to the Bankruptcy Court by the creditor when obtaining an abandonment by this procedure.

Cross reference  
11 U.S.C. §§ 554 and 725  
Bankruptcy Rules 6007; 9014  
Appendix A (Fees)  
Appendix F, Form No. 8

6008-1      Redemption (new number)

8.09                      Redemption (old number)

A motion to redeem tangible personal property shall set forth the debtor's estimated value of the property and the amount to be paid. The motion and notice shall be filed with the Court along with a proposed order.

Counsel for the debtor(s) shall serve the verified motion for redemption and notice of motion on the affected creditor(s). The notice shall provide that the named creditor shall serve upon the Clerk and upon counsel for the debtor a written request for hearing within

twenty (20) days from the date of service. In the event that no written request for hearing is filed by any creditor, the Court may enter the submitted order granting the motion to redeem. In the event a creditor does request a hearing, the motion for redemption shall be set for hearing.

No action will be taken on the motion for redemption if averments regarding value and amount to be paid are not contained in the motion for redemption.

Cross reference  
11 U.S.C. § 722  
Bankruptcy Rules 6008; 9014  
Appendix F, Form No. 11  
Local Rule 9013(d)(6)

4003-2            Lien Avoidance (new number)

8.10                    Lien Avoidance (old number)

A motion to avoid a lien under 11 U.S.C. § 522(f) shall be filed with the Clerk and served on the lienholder, the Trustee, and the U.S. Trustee along with a notice which states that if no response is filed within twenty (20) days, the Court may grant the motion without hearing, but if an objection is filed, a hearing will be held at a date, time, and place to be determined by the Court. A proposed order shall be filed along with the notice and motion

Cross reference  
11 U.S.C. § 522(f)  
Bankruptcy Rules 4003(d); 9014  
Appendix F, Forms No. 9 and 10  
Local Rule 9013(d)(7)

3012-1 Valuation of Collateral (new number)

8.11 Motion to Value (old number)

A motion to value secured claims pursuant to 11 U.S.C. § 506(a) should contain a statement of the movant's estimated value of the collateral or it may be found not to state a claim of relief.

Cross reference  
11 U.S.C. § 506(a)  
Bankruptcy Rule 3012

2083-6 Chapter 13 - Motion and Notice Practice (new number)

8.12 Chapter 13 Motion and Notice Practice (old number)

(a) All motions and applications in a Chapter 13 case shall be served in compliance with these local rules and the Rules of Bankruptcy Procedure. Where notice of a motion is required under Bankruptcy Rule of Procedure 2002, the movant shall file a proposed negative notice with the motion.

(b) An original proposed order shall be provided with motions for relief of matters identified in subpart (c) below. A copy of said motion and the original order must be submitted to the Chapter 13 Trustee at the time the motion is served. Within ten (10) days, the Trustee will submit the proposed order to the Court indicating the Trustee's acceptance or rejection of the motion. All motions to which the trustee objects will be set for hearing.

(c) The following relief may be granted without hearing upon the Chapter 13 Trustee's endorsement of the proposed order granting the requested relief:

Motions to Modify a Confirmed Plan that does not affect payout to unsecured creditors and where affected creditors have endorsed the proposed order;

Motion to pay Trustee directly;

Motion to vacate wage withholding orders;

Application to employ professionals;

Motion to Change Division Venue;

Moratoriums on monthly payments that do not change the length of the plan;

Motion to extend the time to file a plan;

Any other matters where the rules do not require notice and hearing where the payout to creditors is not affected.

4070-1 Insurance (new number)

8.13 Maintenance of Insurance on Secured Property (old number)

In a case under Chapter 7 or Chapter 13 where the debtor has possession and/or use of secured property and is obligated to keep it insured, the debtor must provide proof of insurance to the creditor holding security in the property within seventy-two (72) hours of a written request to the debtor or to counsel.

***ADVERSARY PROCEEDINGS***

7001-1 Adversary Proceedings - General (new number)

9.01 Scope (old number)

Adversary proceedings are governed by Parts VII and IX of the Bankruptcy Rules. The Federal Rules of Civil Procedure and the District Court Local Rules shall apply to all adversary proceedings unless expressly modified by Part VII of the Bankruptcy Rules or supplemented by these Local Rules. (See Appendix I for the applicability of District Court Local Rules to these rules).

Cross reference  
Bankruptcy Rule 7001  
Appendix I

7003-1 Cover Sheet/Complaint (new number)

9.02 Complaint and Cover Sheet (old number)

All complaints initiating adversary proceedings shall be accompanied by a fully completed Adversary Proceeding Cover Sheet (Form B104). The plaintiff must file two (2) copies of the complaint along with the original.

7001-2 Adversary Proceedings - Filing Fee (new number)

9.03 Filing Fee (old number)

A filing fee (See Appendix A for current fee) shall accompany the complaint unless the plaintiff is the United States of America, an agency thereof, or Chapter 7 debtor. A Chapter 7 Trustee may obtain a waiver of the filing fee until final distribution of the estate by completing a fee waiver form and filing it along with the complaint. The required filing fee must be paid in full and may not be paid in installments.

Cross reference  
28 U.S.C. § 1930  
Appendix A (Fees)  
Appendix G-5

7004-2 Summons/Service of Process (new number)

9.04 Summons and Service of Process (old number)

Persons filing complaints to initiate adversary proceedings shall complete, at or before the time of filing, a sufficient number of summons (Form BOF26) for service on all defendants by inserting the following:

- (1) "Southern District of West Virginia"
- (2) Style of case and adversary proceeding
- (3) Name and address of counsel for the plaintiff

Cross reference  
See generally, Part VII, Bankruptcy Rules  
Appendix G-1 and G-2

The summons is issued by the Clerk and transmitted to counsel for the plaintiff for service on the defendant(s). The summons and complaint must be served within ten (10) days after the date of issuance by the Clerk.

Upon service of the summons and complaint, counsel shall file a certificate of service with the Court reflecting service on all parties to the action.

Cross reference  
Bankruptcy Rule 7004  
Local Rule 2.08

(To be Deleted - See LR 7003-1)

9.05 Copies Required (old number)

The plaintiff must file two (2) copies of the complaint along with the original.

7008-1 Core/Non-Core Designation (Complaint) (new number)

9.06 Statement of Core or Non-Core (old number)

The complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core. If non-core, a statement that the pleader does not consent to the entry of a final order or judgment by the Bankruptcy Judge.

Cross reference  
Bankruptcy Rule 7008(a)  
28 U.S.C. § 157(c)

7012-1 Core/Non-Core Designation (Responsive Pleading) (new number)

A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to the entry of a final order or judgment by the Bankruptcy Judge.

Cross reference  
Bankruptcy Rule 7012(b)  
28 U.S.C. § 157(c)

7016-1 Pre-Trial Procedures (new number)

9.07 Time Frame Order (old number)

A Time Frame Order shall be issued by the Court when all responsive pleadings have been filed. The Time Frame Order shall set forth dates for filing dispositive motions, completing discovery, filing witness and exhibit lists, the settlement conference, and trial.

Cross reference  
Appendix G-3

9019-1            Settlements and Agreed Orders (new number)

9.08                    Compromise and Settlement (old number)

In the event the parties compromise their positions and settle the matter in controversy, a motion to compromise shall be filed with the Court which sets forth the terms and conditions of the proposed settlement. The terms of the settlement shall be sent out on twenty (20) day negative notice to all creditors and other parties in interest when the agreement involves the trustee or debtor-in-possession and has an effect on the assets of the debtor's estate, or if the Court, on its own discretion, requires such notice.

The parties shall submit an agreed order which has been signed by counsel for all parties for consideration by the Court. If the terms of the compromise have been sent out on notice, the Court may approve the compromise by entry of the agreed order at the end of the twenty (20) day period if no objections have been filed. If an objection has been filed, the Court will set it for hearing.

Cross reference  
Bankruptcy Rules 2002(a); 9019  
Appendix G-4

7065-1            Injunctions (new number)

9.09                    Injunctive Relief (old number)

An adversary proceeding must be commenced in order to request the issuance of a temporary restraining order or to seek a preliminary injunction. The requirements for seeking such relief are the same as those contained within Rule 65 of the Federal Rules of Civil Procedure.

Cross reference  
Bankruptcy Rules 7001; 7065  
Rule 65, F.R.Civ.Pro.

9027-1            Removal/Remand (new number)

9.10                    Removals and Remand (old number)

(a)    Removal

The removal of a civil action to a Bankruptcy Court requires the filing of a "Notice of Removal" with the Bankruptcy Clerk's office for the district within which the civil action is pending. The notice shall be signed pursuant to Rule 9011 and

contain a short statement of the facts which entitle the party to remove the cause of action, contain a statement that upon removal the proceeding is core or non-core and, if non-core, that the party filing the notice does or does not consent to entry of final orders or judgment by the Bankruptcy Judge, and be accompanied by a copy of all process and pleadings. Removal of a claim or cause of action is effected upon the filing of a copy of the notice with the clerk of the court from which the action was removed.

The removed action is treated as an adversary proceeding and requires a filing fee (See Appendix A), unless the party removing the action is a Chapter 7 debtor. The notice shall be accompanied by a completed Adversary Proceeding Cover Sheet (Form B104).

The party filing the notice shall serve a copy of it on all parties to the removed cause of action. Any party who has filed a pleading in connection with the removed cause of action, other than the party filing the notice, shall file a statement admitting or denying any allegation in the notice regarding whether the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the Bankruptcy Judge. This statement shall be signed pursuant to Rule 9011 and shall be filed and served not later than ten (10) days after the filing of the notice of removal.

(b) Remand

A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.

Cross reference  
Bankruptcy Rules 9014; 9027  
Appendix A (Fees)

7041-1            Dismissal (new number)

9.11                Dismissal (old number)

When it appears to the Court that the principal issues have become moot or the parties have shown no manifest interest to further prosecute a pending adversary proceeding, the court may direct the Clerk to prepare a "Notice of Dismissal." The notice, served on counsel of record, states that the action may be dismissed after thirty (30) days from the date of issuance unless good cause can be shown why the proceeding should not be dismissed.

Cross reference  
Bankruptcy Rule 7041  
District Court Local Rules  
Rule 41, F.R.Civ.Proc.

***APPEALS***

8001-1            Notice of Appeal (new number)

10.01            Notice of Appeal (old number)

The Bankruptcy Clerk shall serve notice of the filing of a Notice of Appeal by mailing copies to counsel of record. Sufficient copies of the notice must be provided by the appellant to the Clerk for that purpose. The notice of appeal shall be accompanied by the required filing and docketing fees.

Cross reference  
Bankruptcy Rules 8001; 8002; and 8004  
Official Bankruptcy Form 35  
Appendix A (Fees)

To Be Deleted

10.02            Filing and Docketing Fees (old number)

The Notice of Appeal shall be accompanied with the required filing and docketing fees.

Cross reference  
Appendix A (Fees)

8006-1            Designation of Record (new number)

10.03            Designation of Record (old number)

The designation of record shall give the docket number and an abbreviated description of the docket entry for each item being designated. Any party filing a designation of items to be included in the record shall provide to the Clerk a copy of the items designated or, if the party fails to provide the copy, the Clerk shall prepare the copy at the expense of the party. A copy of a designation of record and statement of issues shall be served by the appellant and appellee, if applicable, on the United States Trustee.

5077-1            Transcripts (new number)

10.04            Transcripts (old number)

[RESERVED]

Cross reference  
Bankruptcy Rule 8006; 8007

***POST-JUDGMENT REMEDIES***

7069-1            Praecipe (new number)

11.01            PRAECIPE (old number)

To obtain the following post-judgment remedies, a judgment creditor must file with the Clerk of the Bankruptcy Court a written request (praecipe) for the relief sought.

7069-2            Writ of Execution (new number)

11.02            Writ of Execution (old number)

Unless otherwise ordered by the Court, a writ of execution cannot be issued until ten days after the entry of the judgment order. A writ of execution cannot be issued if the judgment debtor has obtained a stay pending appeal from the Court and posted a supersedeas bond in the amount set by the Court. No bond is required for an appeal taken by the United States or an agency thereof.

A writ of execution shall be made returnable not less than thirty (30) days nor more than ninety (90) days after issuance. The praecipe should indicate the return date desired by the judgment creditor. The party requesting the writ must furnish the Clerk with a completed U.S. Marshal's Process Receipt and Return Form 285.

7069-3            Abstract of Execution (new number)

11.03            Abstract of Execution (old number)

Upon application in writing (praecipe) by the judgment creditor, a Clerk of the Bankruptcy Court may issue an abstract of execution for filing with a Clerk of the County Commission.

7071-1            Suggestion (new number)

11.04            Suggestion (old number)

A suggestion can be issued only after a writ of execution has been issued (or at the same time if both are forwarded to the United States Marshal). The judgment creditor must provide the Bankruptcy Clerk with a completed suggestion with summons, U.S. Marshal's Form 285, and a notice of possibility of exemptions, if required, which is served by the Clerk on the judgment debtor via certified mail.

7071-2            Suggestee Execution (new number)

11.05            Suggestee Execution (old number)

A suggestee execution will be issued by the Bankruptcy Clerk after receiving from the judgment creditor a completed suggestee execution, affidavit for suggestee execution, notice of possibility of exemptions, if required, and U.S. Marshal's Form 285. The notice of possibility of exemptions is served on the debtor by the Clerk via certified mail.

The amount contained in the affidavit for suggestee execution can be less than the amount contained in the judgment order, but never more. Renewal of a suggestee execution must be requested and issued prior to the expiration of the one-hear period for which it was originally issued.

7069-4            Abstract of Judgment (new number)

11.06            Abstract of Judgment (old number)

Upon application in writing (praecipe) by the judgment creditor, the Clerk of the Bankruptcy Court may issue an abstract of judgment any time after entry of the judgment order.

7070-1            Writ of Possession (new number)

11.07            Writ of Possession (old number)

The Bankruptcy Clerk may issue a writ of possession only upon order of the Court.

5003-1            Certification of Judgment for Registration in Another District (new number)

11.08            Certification of Judgment for Registration  
in Another District (old number)

(a) Issuance: Upon request and payment of the prescribed fee, the Bankruptcy Clerk will complete the Certification of Judgment Form and forward it along with a certified copy of the judgment order to the requesting party. It is the responsibility of the requesting party to forward the certification of judgment form with a certified copy of the judgment order to the Bankruptcy Clerk of the District in which the party desires to register the judgment.

(b) Filing: Upon receipt of a proper certification of judgment for registration in another district and the proper filing fee, the Bankruptcy Clerk will create a main case docket card and assign it a miscellaneous case number.

7054-1            Interest on Judgments (new number)

11.09            Interest on Judgments (old number)

The judgment creditor is entitled to interest from the date of the entry of the judgment. The interest shall be calculated at a rate equal to the coupon issue yield equivalent of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment.

5080-1            Fees (new number)

11.10            Fees (old number)

The current fee for filing a certification of judgment is contained in Appendix A.

Cross reference

28 U.S.C. §§ 1930 and 1961

Appendix A (Fees)

Appendix H (Post-Judgment Remedies Forms)